# WORKS

OF

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TO WHICH IS PREFIXED,

## An Account of his Life and Whritings.

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Assistant Chaplain of the Magdalen, &c.

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### HISTORY OF SCOTLAND.

#### BOOK VII.

1584. Throkmorton's conspiracy against Elizabeth. While Scotland was torn by intestine factions, Elizabeth was alarmed with the rumour of a project in agitation for setting Mary at liberty. Francis Throkmorton, a Cheshire gentleman, was suspected of being deeply concerned in the design, and

on that suspicion he was taken into custody. Among his papers were found two lists; one, of the principal harbours in the kingdom, with an account of their situation, and of the depth of water in each; the other, of all the eminent Roman Catholics in England. This circumstance confirmed the suspicion against him, and some dark and desperate conspiracy was supposed just ready to break out. At first he boldly avowed his innocence, and declared that the two papers were forged. by the queen's ministers, in order to intimidate or ensnare him; and he even endured the rack with the utmost fortitude. But being brought a second time to the place of torture, his resolution failed him, and he not only acknowledged that he had held a secret correspondence with the queen of Scots, but discovered a design that was formed to invade England. The duke of Guise, he said, undertook to furnish troops, and to conduct the enterprise. The pope and king of Spain were to supply the money necessary for carrying it on; all the English exiles were ready to take arms; many of the Catholics at home would be ready to join them VON. III.

at their landing; Mendoza, the Spanish ambassador, who was the life of the conspiracy, spared no pains in fomenting the spirit of disaffection among the English, or in hastening the preparations on the continent; and by his command, he made the two lists, the copies whereof had been found in his possession. This confession he retracted at his trial; returned to it again after sentence was passed on him; and retracted it once more at the place of execution.a

To us in the present age who are assisted in forming our opinion of this matter by the light which time and history have thrown upon the designs and characters of the princes of Guise, many circumstances of Throkmorton's confession appear to be extremely remote from truth, or even from probability. The duke of Guise was, at that juncture, far from being in a situation to undertake foreign conquests. Without either power or office at court; hated by the king, and persecuted by the favourites; he had no leisure for any thoughts of disturbing the quiet of neighbouring states; his vast and ambitious mind was wholly occupied in laying the foundation of that famous league which shook the throne of France. But at the time when Elizabeth detected this conspiracy, the close union between the house of Guise and Philip was remarkable to all Europe; and as their great enterprise against Henry III. was not yet disclosed, as they endeavoured to conceal that under their threatenings to invade England, Throkmorton's discovery appeared to be extremely probable; and Elizabeth, who knew how ardently all the parties mentioned by him wished her downfal, thought that she could not guard her kingdom with too Designs of . much care. The indiscreet zeal of the English exiles increased her fears. Not Mary's adhe-

her severity towards the Scottish queen, and her cruel persecution of her Catholic subjects, not thirting it enough that one pope had threatened her 4 Hollingshed, 1370.

satisfied with incessant outcries against

rents against

Elizabeth.

with the sentence of excommunication, and another had actually pronounced it, they now began to disperse books and writings, in which they endeavoured to persuade their disciples, that it would be a meritorious action to take away her life; they openly exhorted the maids of honour to treat her as Judith did Holofernes. and, by such an illustrious deed, to render their own names honourable and sacred in the church throughout all future ages. For all these reasons, Elizabeth not only inflicted the punishment of a traitor on Throkmorton, but commanded the Spanish ambassador instantly to leave England; and that she might be in no danger of being attacked within the island, she determined to use her utmost efforts, in order to recover that influence over the Scottish councils, which she had for some time entirely lost.

She endeavours to reestablish her influence in Scotland by

There were three different methods by which Elizabeth might hope to accomplish this; either by furnishing such effectual aid to the banished nobles, as would enable them to resume the chief direction of gaining Arran. affairs; or by entering into such a treaty with Mary, as might intimidate her son,

who being now accustomed to govern, would not be averse from agreeing to any terms rather than resign the sceptre, or admit an associate in the throne; or by gaining the earl of Arran, to secure the direction of the king his master. The last was not only the easiest and speediest, but most likely to be successful. This Elizabeth resolved to pursue; but without laying the other two altogether aside. With this view she sent Davison, one of her principal secretaries, a man of abilities and address, into Scotland. A minister so venal as Arran, hated by his own countrymen, and holding his power by the most precarious of all tenures. the favour of a young prince, accepted Elizabeth's offers without hesitation, and deemed the acquisition of her protection to be the most solid foundation of his own

greatness. Soon after he consented to an Aug. 13. interview with lord Hunsdon, the governor of Berwick, and being konoured with the pompous title of lieutenant-general for the king, he appeared at the place appointed with a splendid train. In Hunsdon's presence he renewed his promises of an inviolable and faithful attachment to the English interest, and assured him that James should enter into no negotiation which might tend to interrupt the peace between the two kingdoms; and as Elizabeth began to entertain the same fears and jealousies concerning the king's marriage, which had formerly disquieted her with regard to his mother's, he undertook to prevent James from listening to any overture of that kind, until he had previously obtained the queen of England's consent.c

Severe proceedings against the banished lords; The banished lords and their adherents soon felt the effects of Arran's friendship with England. As Elizabeth had permitted them to take refuge in her dominions, and several of her ministers were of

opinion that she ought to employ her arms in defence of their cause, the fear of this was the only thing which restrained James and his favourite from proceeding to such extremities against them, as might have excited the pity or indignation of the English, and have Aug. 22.

vigour in their behalf. But every apprehension of this kind being now removed, they ventured to call a parliament, in which an act was passed, attainting Angus, Mar, Glamis, and a great number of their followers. Their estates devolved to the crown, and according to the practice of the Scottish monarchs, who were obliged to reward the faction which adhered to them, by dividing with it the spoils of the vanquished, James dealt out the greater part of these to

Arran and his associates.<sup>d</sup>
Nor was the treatment of the clergy less rigorous.

Cald. iii. 491. Melv. 315. See Append. No. XLIII.

All ministers, readers, and professors in against the colleges, were enjoined to subscribe, withclergy. in forty days, a paper testifying their approbation of the laws concerning the church enacted in last parliament. Many, overawed or corrupted by the court, yielded obedience; others stood out. The stipends of the latter were sequestered, some of the more active committed to prison, and numbers compelled to fly the kingdom. Such as complied, fell under the suspicion of acting from mercenary or ambitious motives. Such as adhered to their principles, and suffered in consequence of it, acquired a high reputation, by giving this convincing evidence of their firmness and sincerity. The judicatories of the church were almost entirely suppressed. In some places scarce as many ministers remained, as to perform the duties of religious worship; they soon sunk in reputation among the people, and being prohibited not only from discoursing of public affairs, but obliged, by the jealousy of the administration, to frame every sentiment and expression in such a manner as to give the court no offence, their sermons were deemed languid, insipid, and contemptible; and it became the general opinion, that together with the most virtuous of the nobles and the most faithful of the clergy, the power and vigour of religion were now banished out of the kingdom.

Meanwhile, Elizabeth was carrying on one of those fruitless negotiations with the queen of Scots, which it had become almost matter of form to renew every year. They served not only to amuse that unhappy princess with some prospect of liberty; but furnished an apology for eluding the solicitations of foreign powers on her behalf; and were of use to overawe James, by shewing him that she could at any time set free a dangerous rival to dispute his authority. These treaties she suffered to proceed to what length she pleased, and never wanted a pretence for breaking them off, when they became no longer necessary. The treaty now-on

foot was not, perhaps, more sincere than many which preceded it; the reasons, however, which rendered it ineffectual were far from being frivolous.

New conspiracy against Elizabeth.

As Crichton, a Jesuit, was sailing from Flanders towards Scotland, the ship on board of which he was a passenger happened to be chased by pirates, who, in that age, often infested the narrow seas. Crichton, in

great confusion, tore in pieces some papers in his custody, and threw them away; but, by a very extraordinary accident, the wind blew them back into the ship. and they were immediately taken up by some of the passengers, who carried them to Wade, the clerk of He, with great industry and pathe privy-council. tience, joined them together, and they were found to contain the account of a plot, said to have been formed by the king of Spain and the duke of Guise, for invading England. The people were not yet recovered from the fear and anxiety occasioned by the conspiracy in which Throkmorton had been engaged, and as his discoveries appeared now to be confirmed by additional evidence, not only all their former apprehensions recurred, but the consternation became general and ex-As all the dangers with which England had been threatened for some years, flowed either immediately from Mary herself, or from such as made use of her name to justify their insurrections and conspiracies, this gradually diminished the compassion due to her situation, and the English, instead of pitying, began to fear and to hate her. Elizabeth, under whose wise and pacific reign the English enjoyed tranquillity, and had opened sources of wealth unknown to their ancestors, was extremely beloved by all her people; and regard to her safety, not less than to their own in-

terest, animated them against the Scottish queen. In order to discourage her adherant association in opposition to them, by some public deed, of the attachment of the English to their own sovereign,

and that any attempt against her life would Oct. 19. prove fatal to her rival. With this view an association was framed, the subscribers of which bound themselves by the most solemn oaths, "to defend the queen against all her enemies, foreign and domestic: and if violence should be offered to her life, in order to favour the title of any pretender to the crown, they not only engaged never to allow or acknowledge the person or persons by whom, or for whom, such a detestable act should be committed, but vowed, in the presence of the eternal God, to prosecute such person or persons to the death, and to pursue them, with their utmost vengeance, to their utter overthrow and extirpation." Persons of all ranks subscribed this combination with the greatest eagerness and unanimity. Mary considered this association, not only

which as an avowed design to exclude her from all greatly right of succession, but as the certain and immediate forerunner of her destruction. In order to avert this, she made such feeble efforts as were still in her power, and sent Naué, her secretary, to court, with offers of more entire resignation to the will of Elizabeth, in every point, which had been the occasion of their long enmity, than all her sufferings hitherto had been able to extort. But whether Mary adhered inflexibly to her privileges as an independent sovereign, or, yielding to the necessity of her situation, endeayoured, by concessions, to sooth her rival, she was equally unsuccessful. Her firmness was imputed to obstinacy, or to the secret hope of foreign assistance; her concessions were either believed to be insincere, or to flow from the fear of some imminent danger. Her present willingness, however, to comply with any terms was so great, that Walsingham warmly urged his mistress to come to a final agreement with her.' Elizabeth was persuaded, that it was the spirit raised by the association which had rendered her so passive

and compliant. She always imagined that there was something mysterious and deceifful in all Mary's actions, and suspected her of carrying on a dangerous correspondence with the English Catholics, both within and without the kingdom. Nor were her suspicions altogether void of foundation. Mary had, about this time, written a letter to Sir Francis Inglefield, urging him to hasten the execution of what the calls the Great Plot or Designment, without hesitating on account of any danger in which it might involve her life, which she would most willingly part with, if by that sacrifice, she could procure relief for so great a number of the

She is treated with greater rigour. oppressed children of the church. Instead, therefore, of hearkening to the overtures which the Scottish queen made, or granting any mitigation of the hardships of which she

complained, Elizabeth resolved to take her out of the hands of the earl of Shrewsbury, and to appoint Sir Amias Paulet and Sir Drue Drury to be her keepers. Shrewsbury had discharged his trust with great fidelity, during fifteen years, but, at the same time, had treated Mary with gentleness and respect, and had always sweetened harsh commands by the humanity with which he put them in execution. The same politeness was not to be expected from men of an inferior rank, whose severe vigilance perhaps was their chief recommendation to that employment, and the only merit by which they could pretend to gain favour or preferment.\footnoten

1.

As James was no less eager than ever to deprive the banished nobles of Elizabeth's protection, he appointed the master of Gray his ambassador to the court of England, and

intrusted him with the conduct of a negotiation for that purpose. For this honour he was indebted to the envy and jealousy of the earl of Arran. Gray possessed all the talents of a courtier; a graceful person, an insinuating address, boundless ambition, and a rest-

less and intriguing spirit. During his residence in France, he had been admitted into the most intimate familiarity with the duke of Guise, and, in order to gain his favour, had renounced the Protestant religion, and professed the utmost zeal for the captive queen, who carried on a secret correspondence with him, from which she expected great advantages. On his return into Scotland, he paid court to James with extraordinary assiduity, and his accomplishments did not fail to make their usual impression on the king's heart. Arran, who had introduced him, began quickly to dread. his growing favour; and flattering himself, that absence would efface any sentiments of tenderness which were forming in the mind of a young prince, pointed him out by his malicious praises, as the most proper person in the kingdom for an embassy of such importance; and contributed to raise him to that high dignity, in order to hasten his fall. Elizabeth, who had an admirable dexterity in discovering the proper instruments for carrying on her designs, endeavoured, by caresses, and by presents, to secure Gray to her interest. The former flattered his vanity, which was great; the latter supplied his profuseness, which was still greater. He abandoned himself without reserve to Elizabeth's direction, and not only undertook to retain the king under the influence of England, but acted as a spy upon the Scottish queen, and betrayed to her rival every secret that he could draw from her by his high pretensions of zeal in her service."

Gray's credit with the English court was
His interest
with the
court of
England.
Dec. 31.
Gray's credit with the English court was
extremely galling to the banished nobles.
Elizabeth no longer thought of employing
her power to restore them; she found it
easier to govern Scotland by corrupting the
king's favourites; and in compliance with

Gray's solicitations, she commanded the exiles to leave the north of England, and to remove into the heart of the kingdom. This rendered it difficult for

m Strype, iii. 302. Melv. 316.

them to hold any correspondence with their partisans in Scotland, and almost impossible to return thither without her permission. Gray, by gaining a point which James had so much at heart, rivetted himself more firmly than ever in his favour; and, by acquiring greater reputation, became capable of serving Elizabeth with greater success."

1585.
Arran's corruption and insolence.

Arran had now possessed for some time all the power, the riches, and the honours, that his immoderate ambition could desire, or the fondness of a prince, who set no limits to his liberality towards his favourites, could bestow. The office of lord-chancellor, the

highest and most important in the kingdom, was conferred upon him, even during the life of the earl of Argyll, who succeeded Athol in that dignity; and the public beheld, with astonishment and indignation, a man educated as a soldier of fortune, ignorant of law. and a contemner of justice, appointed to preside in parliament, in the privy-council, in the court of session, and intrusted with the supreme disposal of the property of his fellow-subjects. He was, at the same time, governor of the castles of Stirling and Edinburgh, the two principal forts in Scotland; provost of the city of Edinburgh; and as if by all these accumulated dignities his merits were not sufficiently recompensed, he had been created lieutenant-general over the whole kingdom. No person was admitted into the king's presence without his permission; no favour could be obtained but by his mediation. James, occupied with youthful amusements, devolved upon him the whole regal authority. Such unmerited elevation increased his natural arrogance, and rendered it intolerable. He was no longer content with the condition of a subject, but pretended to derive his pedigree from Murdo duke of Albany; and boasted openly, that his title to the crown was preferable to that of the king himself. But, together with these thoughts of royalty, he retained the

<sup>&</sup>quot; Cald. iii. 643. Crawf. Offic. of State, App. 447.

meanness suitable to his primitive indigence. His venality as a judge was scandalous, and was exceeded only by that of his wife, who, in defiance of decency, made herself a party in almost every suit which came to be decided, employed her influence to corrupt or overawe the judges, and almost openly dictated their decisions. His rapaciousness as a minister was insatiable. Not satisfied with the revenues of so many offices; with the estate and honours which belonged to the family of Hamilton; or with the greater part of Gowrie's lands, which had fallen to his share; he grasped at the possessions of several of the nobles. He required lord Maxwell to exchange part of his estate, for the forfeited lands of Kinneil; and because he was unwilling to quit an ancient inheritance for a possession so precarious, he stirred up against him his hereditary rival, the laird of Johnston, and involved that corner of the kingdom in a civil war. He committed to prison the earl of Athol, lord Home, and the master of Cassils; the first, because he would not divorce his wife, the daughter of the earl of Gowrie, and entail his estate on him; the second, because he was unwilling to part with some lands adjacent to one of Arran's estates; and the third, for refusing to lend him money. His spies and informers filled the whole country, and intruded themselves into every company. The nearest neighbours distrusted and feared each other. All familiar society was at an end. Even the common intercourses of humanity were interrupted, no man knowing in whom to confide, or where to utter his complaints. There is not perhaps in history an example of a minister so universally detestable to a nation, or who more justly deserved its detestation.q

Arran, notwithstanding, regardless of the sentiments and despising the murmurs of the people, gave a loose to his natural temper, and proceeded to acts still more violent. David Home of Argaty, and Patrick his bro-

P Cald. iii. 331. Scotstarvet's Staggering State, 7. q Spotsw. 337, 338.

ther, having received letters from one of the banished lords about private business, were condefined and put to death, for holding correspondence with rebels. Cunninghame of Dramwhasel, and Douglas of Mains, two gentlemen of honour and reputation, were accused of having conspired with the exiled nobles to seize the king's person; a single witness only appeared; the evidence they produced of their innocence was unanswerable; their accuser himself not long after acknowledged that he had been suborned by Arran: and all men believed the charge against them to be groundless; they were found guilty, notwithstanding,

Feb. 9. and suffered the death of traitors."

Parry's conspiracy against Elizabeth.

About the same time that these gentlemen were punished for a pretended conspiracy, Elizabeth's life was endangered by a real one. Parry, a doctor of laws, and a member of the house of commons, a man vain and fantastic, but of a resolute spirit, had lately been reconciled to the church of Rome; and fraught with the zeal of a new convert, he offered to demonstrate the sincerity of his attachment to the religion which he had embraced, by killing Elizabeth. Cardinal Allen had published a book, to prove the murder of an excommunicated prince to be not only lawful, but a meritorious action. The pope's nuncio at Venice, the Jesuits both there and at Paris, the English exiles, all approved of the design. The pope himself exhorted him to persevere; and granted him for his encouragement a plenary indulgence, and remission of his sins. Cardinal di Como wrote to him a letter to the same purpose; but though he often got access to the queen, fear, or some remaining sense of duty, restrained him from perpetrating the crime. Happily his intention was at last discovered by Nevil, the only person in England to whom

he had communicated it; and having himself voluntarily confessed his guilt, he suffered the punishment which it deserved.

r Spotsw. 338. Cald. iii. 794. State Trials, i. 103.

These repeated conspiracies against their A severe sovereign awakened the indignation of the statute. which prov-English parliament, and produced a very exed fatal to traordinary statute, which, in the end, proved Mary. fatal to the queen of Scots. By this law the association in defence of Elizabeth's life was ratified, and it was farther enacted, "That if any rebellion shall be excited in the kingdom, or any thing attempted to the hurt of her majesty's person, by or for any person pretending a title to the crown, the queen shall empower twenty-four persons, by a commission under the great seal, to examine into, and pass sentence upon, such offences; and after judgment given, a proclamation shall be issued, declaring the persons whom they find guilty excluded from any right to the crown; and her majesty's subjects may lawfully pursue every one of them to the death, with all their aiders and abettors; and if any design against the life of the queen take effect, the persons by or for whom such a detestable act is executed, and their issues, being in any ways assenting or privy to the same, shall be disabled for ever from pretending to the crown, and be pursued to death in the like manner." This act was plainly levelled at the queen of Scots; and, whether we consider it as a voluntary expression of the zeal and concern of the nation for Elizabeth's safety, or whether we impute it to the influence which that artful princess preserved over her parliaments, it is no easy matter to reconcile it with the general principles of justice or humanity. Mary was thereby rendered accountable not only for her own actions, but for those of others; in consequence of which she might forfeit her right of succession, and even her life itself.

The rigour with which she was treated increased.

Mary justly considered this act as a warning to prepare for the worst extremities. Elizabeth's ministers, it is probable, had resolved by this time to take away her life; and suffered books to be published, in order

to persuade the nation that this cruel and unprecedented measure was not only necessary but just." Even that short period of her days which remained, they rendered uncomfortable, by every hardship and · indignity which it was in their power to inflict. Almost all her servants were dismissed, she was treated no longer with the respect due to a queen; and, though the rigour of seventeen years' imprisonment had broken her constitution, she was confined to two ruinous chambers, scarcely habitable, even in the middle of summer, by reason of cold. Notwithstanding the scantiness of her revenue, she had been accustomed to distribute regularly some alms among the poor in the village adjoining to the castle. Paulet now refused her liberty to perform this pious and humane office, which had afforded her great consolation amidst her own sufferings. The castle in which she resided was converted into a common prison; and a young man, suspected of Popery, was confined there, and treated under her eye with such rigour, that he died of the ill usage. She often complained to Elizabeth of these multiplied injuries, and expostulated as became a woman and a queen; but as no political reason now obliged that princess to amuse her any longer with fallacious hopes, far from granting her any redress, she did not even deign to give her any answer. The king of France, closely allied to Elizabeth, on whom he depended for assistance against his rebellious subjects, was afraid of espousing Mary's cause with any warmth: and all his solicitations in her behalf were feeble, formal, and inefficacious. But Castelnau, the French ambássador, whose compassion and zeal for the unhappy queen supplied the defects in his instructions, remonstrated with such vigour against the indignities to which she was exposed, that by his importunity, he prevailed at length to have her removed to Tuthbury; though she was confined the greater part of another winter in her present wretched habitation.x

A breach between Mary and her son. Neither the insults of her enemies, nor the neglect of her friends, made such an impression on Mary, as the ingratitude of her son. James had hitherto treated his mother with filial respect, and had even entered

into negotiations with her, which gave umbrage to Elizabeth. But as it was not the interest of the English queen that his good correspondence should continue, Gray, who, on his return to Scotland, found his favour with the king greatly increased by the success of his embassy, persuaded him to write a harsh and undutiful letter to his mother, in which he expressly refused to acknowledge her to be queen of Scotland, or to consider his affairs as connected, in any wise, with hers. This cruel requital of her maternal tenderness overwhelmed Mary with sorrow and despair. March 24. "Was it for this," said she, in a letter to the French ambassador, "that I have endured so much, in order to preserve for him the inheritance to which I have a just right? I am far from envying his authority in Scotland. I desire no power there: nor wish to set my foot in that kingdom, if it were not for the pleasure of once embracing a son, whom I have hitherto loved with too tender Whatever he either enjoys or expects, he derived it from me. From him I never received assistance, supply, or benefit of any kind. Let not my allies treat him any longer as a king: he holds that dignity by my consent; and if a speedy repentance do not appease my just resentment, I will load him with a parent's curse, and surrender my crown, with all my pretensions, to one who will receive them with gratitude, and defend them with vigour." The love which James bore to his mother, whom he had never known, and whom he had been early taught to consider as one of the most abandoned persons of her sex, cannot be supposed ever to have been ardent; and he did not now take any pains to regain her favour.

Murdin, 566. Jebb, ii. 571. See App. No. XIV.

But whether her indignation at his undutiful behaviour, added to her bigoted attachment to Popery, prompted Mary at any time to think seriously of disinheriting her son; or whether these threatenings were uttered in a sudden sally of disappointed affection, it is now no easy matter to determine. Some papers which are still extant seem to render the former not improbable.2

Cares of another kind, and no less disqui-Dangerous eting, occupied Elizabeth's thoughts. The situation of calm which she had long enjoyed, seemed Elizabeth:

now to be at an end; and such storms were gathering in every quarter, as filled her with just All the neighbouring nations had undergone revolutions extremely to her disadvantage. The great qualities which Henry III. had displayed in his youth, and which raised the expectations of his subjects so high, vanished on his ascending the throne; and his acquiring supreme power seems not only to have corrupted his heart, but to have impaired his understanding. He soon lost the esteem and affection of the nation; and a life divided between the austerities of a superstitious devotion, and the extravagancies of the most dissolute debauchery, rendered him as contemptible as he was odious on account of his rapaciousness, his profusion, and the fondness with which he doated on many unworthy minions. On the death of his only brother, those sentiments of the people burst out with Henry had no children, and though but thirty-two years of age, the succession of the crown was already considered as open. The king of Navarre, a distant descendant of the royal family, but the undoubted heir to the crown, was a zealous Protestant.

The prospect of an event so fatal to their from the religion, as his ascending the throne of progress of France, alarmed all the Catholics in Europe: the league; and induced the duke of Guise, countenanced by the pope, and aided by the king of Spain,

to appear as the defender of the Romish faith, and

the asserter of the cardinal of Bourbon's right to the crown. In order to unite the party, a bond of confederacy was formed, distinguished by the name of the Holy League. All ranks of men joined in it with emulation. The spirit spread with the irresistible rapidity which was natural to religious passions in that age. The destruction of the Reformation, not only in France, but all over Europe, seemed to be the object and wish of the whole party; and the duke of Guise, the head of this mighty and zealous body, acquired authority in the kingdom, far superior to that which the king himself possessed. Philip II. by the conquest of Portugal,

from the power of Philip II. had greatly increased the naval power of Spain, and had at last reduced under his dominion all that portion of the continent which lies beyond the Pyrenean mountains,

and which nature seems to have destined to form one great monarchy. William prince of Orange, who first encouraged the inhabitants of the Netherlands to assert their liberties, and whose wisdom and valour formed and protected the rising commonwealth, had fallen by the hands of an assassin. The superior genius of the prince of Parma had given an entire turn to the fate of war in the Low-Countries; all his enterprises, concerted with consummate skill, and executed with equal bravery, had been attended with success; and the Dutch, reduced to the last extremity, were on the point of falling under the dominion of their ancient master.

Her wise and vigorous conduct. None of those circumstances, to which Elizabeth had hitherto owed her security, existed any longer. She could derive no advantage from the jealousy which had subsisted between France and Spain; Philip,

by means of his confederacy with the duke of Guise, had an equal sway in the councils of both kingdoms. The Hugonots were unable to contend with the power of the league; and little could be expected from any diversion which they might create. Nor was it pro-

Resolves

to punish

Mary, and

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king.

bable that the Netherlands could long employ the arms, or divide the strength of Spain. In this situation of the affairs of Europe, it became necessary for Elizabeth to form a new plant of conduct; and her wisdom in forming it was not greater than the vigour with which she carried it on. The measures most suitable to her natural temper, and which she had hitherto pursued, were cautious and safe; those which she now adopted were enterprising and hazardous. She preferred peace, but was not afraid of war; and was capable, when compelled by necessity, not only of defending herself with spirit, but of attacking her enemies with a boldness which averted danger from her own dominions. She immediately furnished the Hugonots with a considerable supply in money. She carried on a private negotiation with Henry III., who, though compelled to join the league, hated the leaders of it, and wished for their destruction. She openly undertook the protection of the Dutch commonwealth, and sent a powerful army to its assistance. She endeavoured to form a general confederacy of the Protestant princes, in opposition to

the Popish league. She determined to proceed with the utmost rigour against the queen of Scots, whose sufferings and rights afforded her enemies a specious pretence for invading her dominions. She resolved to redouble her endeavours, in order to effect

a closer union with Scotland, and to extend and perpetuate her influence over the councils of that nation.

She found it no difficult matter to induce most of the Scottish courtiers to promote all her designs. Gray, Sir John Maitland, who had been advanced to the office of secretary, which his brother formerly held, Sir Lewis Bellenden, the justice-clerk, who had succeeded Gray as the king's resident at London, were the persons in whom she chiefly confided. In order to direct and may 29.

Quicken their motions, she dispatched Sir Edward Wotton along with Bellenden into Scotland. This man was gay, well-bred, and enter-

taining; he excelled in all the exercises for which James had a passion, and amused the young king by relating the adventures which he had met with, and the observations he had made during a long residence in foreign countries; but, under the veil of these superficial qualities, he concealed a dangerous and intriguing spirit. He soon grew into high favour with James, and while he was seemingly attentive only to pleasure and diversions, he acquired influence over the public councils, to a degree which was indecent for a stranger to possess.<sup>a</sup>

Proposes a league with Scotland. Nothing, however, could be more acceptable to the nation, than the proposal which he made of a strict alliance between the two kingdoms, in defence of the reformed religion. The rapid and alarming progress of

the Popish league seemed to call on all Protestant princes to unite for the preservation of their common faith. James embraced the overture with warmth, and a convention of estates empowered him to July, 29. conclude such a treaty, and engaged to ratify it in parliament. The alacrity with which James concurred in this measure must not be wholly ascribed either to his own zeal, or to Wotton's address; it was owing in part to Elizabeth's liberality. As a mark of her motherly affection for the young king, she settled on him an annual pension of five thousand pounds; the same sum which her father had allotted her before she ascended the throne. This circumstance, which she took care to mention, rendered a sum, which in that age was far from being inconsiderable, a very acceptable present to the king, whose revenues, during a long minority, had been almost totally dissipated.

Undermines Arran's power. But the chief object of Wotton's intrigues was to ruin Arran. While a minion so odious to the nation continued to govern the king, his assistance could be of little advantage to Elizabeth. And though Arran, ever since his interview with Hunsdon, had appeared extremely for her interest, she could place no great confidence in a man whose conduct was so capricious and irregular, and who, notwithstanding his protestations to the contrary, still continued a secret correspondence both with Mary and with the duke of Guise. The banished lords were attached to England from affection as well as principle, and were the only persons among the Scots whom, in any dangerous exigency, she could thoroughly trust. Before Bellenden left London, they had been summoned thither, under colour of vindicating themselves from his accusations, but, in reality, to concert with him the most proper measures for restoring them to their country. Wotton pursued this plan, and endeavoured to ripen it for execution; and it was greatly facilitated by an event neither uncommon nor considerable. Sir John Forster, and Ker of Ferniherst, the English and Scottish wardens of the middle marches, having met, according to the custom of the borders, about midsummer, a fray arose, and lord Russel, the earl of Bedford's eldest son, happened to be killed. This scuffle was purely accidental, but Elizabeth chose to consider it as a design formed by Ker, at the instigation of Arran, to involve the two kingdoms in war. She insisted that both should be delivered up to her; and though James eluded that demand, he was obliged to confine Arran in St. Andrew's, and Ker in Aberdeen. During his absence from court. Wotton and his associates carried on their intrigues

Assists the banished nobles. Oct. 16.

without interruption. By their advice, the banished nobles endeavoured to accommodate their differences with lord John and lord Claud, the duke of Chatelherault's two sons, whom Morton's violence had driven

out of the kingdom. Their common sufferings, and common interest, induced both parties to bury in oblivion the ancient discord which had subsisted between the houses of Hamilton and Douglas. By Elizabeth's permission, they returned in a body to the

borders of Scotland. Arran, who had again recovered favour, insisted on putting the kingdom in a posture of defence; but Gray, Bellenden, and Maitland, secretly thwarted all his measures. Some necessary orders they prevented from being issued; others they rendered ineffectual by the manner of execution; and all of them were obeyed slowly, and with reluctance.

Wotton's fertile brain was, at the same time, big with another and more dangerous plot. He had contrived to seize the king, and to carry him by force into England. But the design was happily discovered; and, in order to avoid the punishment which his treachery merited, he departed without taking leave.

They return into Scotland, and are reconciled to the king.

1585.]

Meanwhile the banished lords hastened the execution of their enterprise; and, as their friends and vassals were now ready to join them, they entered Scotland. Wherever they came, they were welcomed as the deliverers of their country, and the most fervent prayers were addressed to heaven for the

success of their arms. They advanced, without losing a moment, towards Stirling, at the head of ten thousand men. The king, though he had assembled an army superior in number, could not venture to meet them in the field, with troops whose loyalty was extremely dubious, and who at best were far from being hearty in the cause; nor was either the town or castle provided for a siege. The gates, however, of both were shut, and the nobles encamped at St. Ninian's.

That same night they surprised the town, or, more probably, it was betrayed into their hands; and Arran, who had undertaken to defend it, was obliged to save himself by a precipitate flight. Next morning they invested the castle, in which there were not provisions for twenty-four hours; and James was necessitated immediately to hearken to terms of accommodation. They were not so elated with success as to urge extravagant demands, nor was the king unwilling

to make every reasonable concession. They obtained a pardon in the most ample form, of all the offences which they had committed; the principal forts in the kingdom were, by way of security, put into their hands; Crawford, Montrose, and colonel Stewart, were removed from the king's presence; and a parliament was called, in order to establish tranquillity in the nation.

A parliament. Dec. 10. Though a great majority in this parliament consisted of the confederate nobles and their adherents, they were far from discovering a vindictive spirit. Satisfied with procuring an

act, restoring them to their ancient honours and estates, and ratifying the pardon granted by the king, they seemed willing to forget all past errors in the administration, and spared James the mortification of seeing his ministers branded with any public note of infamy. Arran alone, deprived of all his honours, stripped of his borrowed spoils, and declared an enemy to his country by public proclamation, sunk back into obscurity, and must henceforth be mentioned by his primitive title of captain James Stewart. As he had been, during his unmerited prosperity, the object of the hatred and indignation of his countrymen, they beheld his fall without pity, nor did all his sufferings mitigate their resentment in the least degree.

The clergy were the only body of men who obtained no redress of their grievances by this revolution. The confederate nobles had all along affected to be considered as guardians of the privileges and discipline of the church. In all their manifestos they had declared their resolution to restore these, and by that popular pretence had gained many friends. It was now natural to expect some fruit of these promises, and some returns of gratitude towards many of the most eminent preachers who had suffered in their cause, and who demanded the repeal of the laws passed the preceding year. The king, however, was resolute to maintain these laws in full authority;

and as the nobles were extremely solicitous not to disgust him, by insisting on any disagreeable request, the claims of the church in this, as well as in many other instances, were sacrificed to the interests of the laity. The ministers gave vent to their indignation in the pulpit, and their impatience under the disappointment broke out in some expressions extremely disrespectful even towards the king himself.

The archbishop of St. Andrew's too, felt the effects of their anger. The provincial synod of Fife summoned him to appear, and to answer for his contempt of the decrees of former assemblies, in presuming to exercise the functions of a bishop. Though he refused to acknowledge the jurisdiction of the court, and appealed from it to the king, a sentence of excommunication, equally indecent and irregular, was pronounced against him. Adamson, with no less indecency, thundered his archiepiscopal excommunication against Melvil, and some other of his opponents.

Soon after, a general assembly was held. April 13. in which the king, with some difficulty, obtained an act, permitting the name and office of bishop still to continue in the church. The power of the order, however, was considerably retrenched. The exercise of discipline, and the inspection of the life and doctrine of the clergy, were committed to presbyteries, in which bishops should be allowed no other pre-eminence but that of presiding as perpetual moderators. They themselves were declared to be subject, in the same manner as other pastors, to the jurisdiction of the general assembly. As the discussion of the archbishop's appeal might have kindled unusual heats in the assembly, that affair was terminated by a compromise. He renounced any claim of supremacy over the church, and promised to demean himself suitably to the character of a bishop, as described by St. Paul. The assembly, without examining the foundations of the sentence of excommunication, declared that it should be held of no effect, and restored him to all the privileges which he enjoyed before it was pronounced. Notwithstanding the extraordinary tenderness shewn for the honour of the synod, and the delicacy and respect with which its jurisdiction was treated, several members were so zealous as to protest against this decision.h

A league with England concluded.

July 5.

persons so warmly attached to Elizabeth, that the league between the two kingdoms, which had been proposed last year, met with no interruption, but from D'Esneval, the French envoy. James himself first offered to renew the negotiations. Elizabeth did not suffer such a favourable opportunity to slip, and instantly dispatched Randolph to conclude a treaty, which she so much. desired. The danger to which the Protestant religion was exposed, by the late combination of the Popish powers for its destruction, and the necessity of a strict confederacy among those who had embraced the Reformation, in order to obstruct their pernicious designs, were mentioned as the foundation of the league. The chief articles in it were, that both parties should bind themselves to defend the Evangelical religion; that the league should be offensive and defensive against all who shall endeavour to disturb the exercise of religion in either kingdom; that if one of the two parties be invaded, the other, notwithstanding any former alliance, should not, directly or

The court of Scotland was now filled with

indirectly, assist the invader: that if England be invaded in any part remote from Scotland, James should

assist the queen with two thousand horse and five thousand foot: that if the enemy landed or approached within sixty miles of Scotland, the king should take the field with his whole forces, in the same manner as he would do in defence of his own kingdom. Elizabeth, in return, undertook to act in deferce of Scotland,

h Cald. iii. 894. Spots. 346.

if it should be invaded. At the same time she assured the king that no step should be taken, which might derogate in any degree from his pretensions to the English crown. Elizabeth expressed great satisfaction with a treaty, which rendered Scotland a useful ally, instead of a dangerous neighbour, and afforded her a degree of security on that side, which all her ancestors had aimed at, but none of them had been able to ob-Zeal for religion, together with the blessings of peace which both kingdoms had enjoyed during a considerable period, had so far abated the violence of national antipathy, that the king's conduct was univer-

sally acceptable to his own people.k

The acquittal of Archibald Douglas, at this time. exposed James to much and deserved censure. This man was deeply engaged in the conspiracy against the life of the king his father. Both Morton, and Binny, one of his own servants, who suffered for that crime. had accused him of being present at the murder.1 He had escaped punishment by flying into England, and James had often required Elizabeth to deliver up a person so unworthy of her protection. He now obtained a licence, from the king himself, to return into Scotland; and, after undergoing a mock trial, calculated to conceal, rather than to detect his guilt, he was not only taken into favour by the king, but sent back to the court of England, with the honourable character of his ambassador. James was now of such an age, that his youth and inexperience cannot be pleaded in excuse for this indecent transaction. It must be imputed to the excessive facility of his temper, which often led him to gratify his courtiers at the expense of his own dignity and reputation.m

Not long after, the inconsiderate affection Rise of of the English Catholics towards Mary, and Babingtheir implacable resentment against Eliza-

k Camd. 513. i Spotsw. 351. <sup>1</sup> See Append. No. XLVII. Arnot, Crim. Trials, 7, &c. m Spots. 348. Cald. Ni. 917.

ton's conspiracy against Elizabeth. beth gave rise to a conspiracy which proved fatal to the one queen, left an indelible stain on the reputation of the other, and presented a spectacle to Europe, of which there had been hitherto no example in the history of

mankind.

Doctor Gifford, Gilbert Gifford, and Hodgson, priests educated in the seminary at Rheims, had adopted an extravagant and enthusiastic notion, that the bull of Pius V. against Elizabeth was dictated immediately by the Holy Ghost. This wild opinion they instilled into Savage, an officer in the Spanish army, noted for his furious zeal and daring courage; and persuaded him that no service could be so acceptable to heaven, as to take away the life of an excommunicated heretic.

Savage, eager to obtain the crown of martyr-April 26. dom, bound himself by a solemn vow to kill Elizabeth. Ballard, a pragmatical priest of that seminary, had at that time come over to Paris, and solicited Mendoza, the Spanish ambassador there, to procure an invasion of England, while the affairs of the league were so prosperous, and the kingdom left naked by sending so many of the queen's best troops into the Netherlands. Paget and the English exiles demonstrated the fruitlessness of such an attempt, unless Elizabeth were first cut off, or the invaders secured of a powerful concurrence on their landing. If it could be hoped that either of these events would happen, effectual aid was promised; and in the mean time Ballard was sent back to renew his intrigues.

May 15. He communicated his designs to Anthony Babington, a young gentleman in Derbyshire, of a large fortune and many amiable qualities, who having contracted, during his residence in France, a familiarity with the archbishop of Glasgow, had been recommended by him to the queen of Scots. He concurred with Paget, in considering the death of Elizabeth as a necessary preliminary to any invasion. Ballard him hopes that an end would soon be put to her

days, and imparted to him Savage's vow, who was now in London waiting for an opportunity to strike the blow. But Babington thought the attempt of too much importance, to rely on a single hand for the execution of it, and proposed that five resolute gentlemen should be joined with Savage in an enterprise, the success of which was the foundation of all their hopes. He offered to find out persons willing to undertake the service, whose honour, secrecy, and courage, they might safely trust. He accordingly opened the matter to Edward Windsor, Thomas Salisbury, Charles Tinley, Chidioc Tichbourne, Robert Gage, John Travers, Robert Barnwell, John Charnock, Henry Dun, John Jones, and Robert Polly; all of them, except Polly, whose bustling forward zeal introduced him into their society, gentlemen of good families, united together in the bonds of private friendship, strengthened by the more powerful tie of religious zeal. Many consultations were held;

their plan of operations was at last settled; and their different parts assigned. Babing-June. ton himself was appointed to rescue the queen scheme of of Scots: Salisbury, with some others, unthe conspidertook to excite several counties to take

The

arms; the murder of the queen, the most dangerous and important service of all, fell to Tichbourne and Savage, with four associates. So totally had their bigoted prejudices extinguished the principles of honour, and the sentiments of humanity suitable to their rank, that, without scruple or compunction, they undertook an action which is viewed with horror, even when committed by the meanest and most profligate of mankind. This attempt, on the contrary, appeared to them no less honourable than it was desperate; and, in order to perpetuate the memory of it, they had a picture drawn, containing the portraits of the six assassins, with that of Babington in the middle, and a motto intimating that they were jointly embarked in some hazardous design.

Discovered by Walsingham. The conspirators, as appears by this wanton and imprudent instance of vanity, seem to have thought a discovery hardly possible,

and neither distrusted the fidelity of their companions, nor doubted the success of their undertaking. But while they believed that their machinations were carried on with the most profound and impenetrable secrecy, every step they took was fully known to Walsingham. Polly was one of his spies, and had entered into the conspiracy, with no other design than to betray his associates. Gilbert Gifford too, having been sent over to England to quicken the motions of the conspirators, had been gained by Walsingham, and gave him sure intelligence of all their projects. That vigilant minister immediately imparted the discoveries which he had made to Elizabeth; and, without communicating the matter to any other of the counsellors, they agreed, in order to understand the plot more perfectly, to wait until it was ripened into some form, and brought near the point of execution.

They are seized and punished. Aug. 4. At last, Elizabeth thought it dangerous and criminal to expose her own life, and to tempt Providence any farther. Ballard, the prime mover in the whole conspiracy, was arrested. His associates, disconcerted and

struck with astonishment, endeavoured to save themselves by flight. But within a few days, all of them, except Windsor, were seized in different places of the kingdom, and committed to the Tower. Though they had undertaken the part, they wanted the firm and determined spirit of assassins; and influenced by fear or by hope, at once confessed all that they knew. The indignation of the people, and their impatience to revenge such an execrable combination against the life of their sovereign, hastened their trial, and all of them suffered the death of traitors.

n Camd. 515. State Trials, vol. 2. 110.

Mary is accused of being an accomplice in the conspiracy. Thus far Elizabeth's conduct may be pronounced both prudent and laudable, nor can she be accused of violating any law of humanity, or of taking any precautions beyond what were necessary for her own safety.

But a tragical scene followed, with regard

But a tragical scene followed, with regard to which posterity will pass a very different judgment.

The frantic zeal of a few rash young men accounts sufficiently for all the wild and wicked designs which they had formed. But this was not the light in which Elizabeth and her ministers chose to place the conspiracy. They wished to persuade the nation, that Babington and his associates should be considered merely as instruments employed by the queen of Scots, the real though secret author of so many attempts against the life of Elizabeth, and the peace of her kingdoms. They produced letters, which they ascribed to her, in support of this charge. These, as they gave out, had come into their hands by the following singular and mysterious method of conveyance. Gifford, on his return into England, had been trusted by some of the exiles with letters to Mary; but, in order to make a trial of his fidelity and address, they were only blank papers made up in that form. These being safely delivered by him, he was afterward employed without farther scruple. Walsingham having found means to gain this man, he, by the permission of that minister, and the connivance of Paulet, bribed a tradesman in the neighbourhood of Chartley, whither Mary had been conveyed, who deposited the letters in a hole in the wall of the castle, covered with a loose stone. Thence they were taken by the queen, and in the same manner her answers returned. All these were carried to Walsingham, opened by him, deciphered, sealed again so dexterously that the fraud could not be perceived, and then transmitted to the persons to whom they were directed. Two letters to Babington, with several to Mendeza, Paget, Englefield, and the English fugitives, were procured by this artifice. It was given

out, that in these letters Mary approved of the conspiracy, and even of the assassination; that she directed them to proceed with the utmost circumspection, and not to take arms until foreign auxiliaries were ready to join them; that she recommended the earl of Arundel, his brothers, and the young earl of Northumberland, as proper persons to conduct and to add reputation to their enterprise; that she advised them, if possible, to excite at the same time some commotion in Ireland; and, above all, besought them to concert with care the means of her own escape, suggesting to them several expedients for that purpose.

The indignation of the English against her on that account. All these circumstances were opened at the trial of the conspirators; and while the nation was under the influence of those terrors which the association had raised, and the late danger had augmented, they were believed without hesitation or inquiry, and spread a general alarm. Mary's zeal for her

religion was well known; and in that age, examples of the violent and sanguinary spirit which it inspired were numerous. All the cabals against the peace of the kingdom for many years had been carried on in her name; and it now appears evidently, said the English, that the safety of the one queen is incompatible with that of the other. Why then, added they, should the tranquillity of England be sacrificed for the sake of a stranger? Why is a life so dear to the nation, exposed to the repeated assaults of an exasperated rival? The case supposed in the association has now happened, the sacred person of our sovereign has been threatened, and why should not an injured people execute that just vengeance which they had vowed?

Elizabeth resolves to proceed to the utmost extremities No sentiments could be more agreeable than these to Elizabeth and her ministers. They themselves had at first propagated them among the people, and they now served both as an apology and a motive for their Scottish queen as they had long meditated. The more numerous the injuries were which Elizabeth had heaped on Mary, the more she feared and hated that unhappy queen, and came at last to be persuaded that there could be no other security for her own life, but the death of her rival. Burleigh and Walsingham had promoted so zealously all Elizabeth's measures with regard to Scottish affairs, and had acted with so little reserve in opposition to Mary, that they had reason to dread the most violent effects of her resentment, if ever she should mount the throne of England. From this additional consideration they endeavoured, with the utmost earnestness, to hinder an event so fatal to themselves, by confirming their mistress's fear and hatred of the Scottish queen.

Her domestics, papers, &c. Meanwhile, Mary was guarded with unusual vigilance, and great care was taken to keep her ignorant of the discovery of the conspiracy. Sir Thomas Gorges was at last sent from court to acquaint ther both of it,

and of the imputation with which she was loaded as accessary to that crime, and he surprised her with the account just as she had got on horseback to ride out along with her keepers. She was struck with astonishment, and would have returned to her apartment, but she was not permitted; and, in her absence, her private closet was broken open, her cabinet and papers were seized, sealed, and sent up to court. Her principal domestics too were arrested, and committed to different keepers. Naué and Curle, her two secretaries, the one a native of France, the other of Scotland, were carried prisoners to London. All the money in her custody, amounting to little more than two thousand pounds, was secured.º And, after leading her about for some days, from one gentleman's house to another, she was conveyed to Fotheringay, a strong castle in Northamptonshire.p

Deliberates concerning the method of proceeding. No farther evidence could now be expected against Mary, and nothing remained but to decide what should be her fate. With regard to this, Elizabeth, and those ministers in whom she chiefly confided, seem to have taken their resolution; but there was

still great variety of sentiments among her other counsellors. Some thought it sufficient to dismiss all Mary's attendants, and to keep her under such close restraint, as would cut off all possibility of corresponding with the enemies of the kingdom; and as her constitution, broken by long confinement, and her spirit, dejected with so many sorrows, could not long support such an additional load, the queen and nation would soon be delivered from all their fears. But though it might be easy to secure Mary's own person, it was impossible to diminish the reverence which the Roman Catholics had for her name, or to extinguish the compassion with which they viewed her sufferings; while such sentiments continued, insurrections and invasions would never be wanting for her relief, and the only effect of any new rigour would be to render these attempts more frequent and more dangerous. For this reason the expedient was rejected.

Determines to try her publicly. A public and legal trial, though the most unexampled, was judged the most unexceptionable method of proceeding; and it had at the same time, a semblance of justice,

accompanied with an air of dignity. It was in vain to search the ancient records for any statute or precedent to justify such an uncommon step, as the trial of a foreign prince, who had not entered the kingdom in arms, but had fled thither for refuge. The proceedings against her were founded on the act of last parliament, and by applying it in this manner, the intention of those who had framed that severe statute became more apparent.<sup>4</sup>

Elizabeth resolved that no circumstance of pomp or

solemnity should be wanting, which could render this transaction such as became the dignity of the person to be tried. She appointed, by a commission under the great seal, forty persons, the mostillustrious in the kingdom by their birth or offices, together with five of the judges, to hear and decide this great cause. Many difficulties were started by the lawyers about the name and title by which Mary should be arraigned; and, while the essentials of justice were so grossly violated, the empty forms of it were the objects of their care. They at length agreed that she should be styled "Mary, daughter and heir of James V. late king of Scots, commonly called queen of Scots and dowager of France."

After the many indignities which she had lately suffered, Mary could no longer doubt but that her destruction was determined. She expected every moment to end her days by poison, or by some of those secret means usually employed against captive princes. Lest the malice of her enemies, at the same time that it deprived her of life, should endeavour likewise to blast her reputation, she wrote to the duke of Guise, and vindicated herself, in the strongest terms, from the imputation of encouraging or of being accessary to the conspiracy for assassinating Elizabeth. In the solitude of her prison, the strange resolution of bringing her to a public trial had not reached her ears, nor did the idea of any thing so unprecedented, and so repugnant to regal majesty, once enter into her thoughts.

On the eleventh of October, the commissioners appointed by Elizabeth arrived at
Fotheringay. Next morning they delivered
a letter from their sovereign to Mary, in
which, after the bitterest reproaches and accusations,
she informed her, that regard for the happiness of the
nation had at last rendered it necessary to make a public inquiry into her conduct, and therefore required her,
as she had lived so long under the protection of the

r Strype, iii. 362. . . . . Jebb, ii. 283. VOL⊕III. E laws of England, to submit now to the trial which they ordained to be taken of her crimes. Mary, though surprised at this message, was neiffirst to plead. of her own dignity. She protested, in the

most solemn manner, that she was innocent of the crime laid to her charge, and had never countenanced any attempt against the life of the queen of England; but at the same time, refused to acknowledge the jurisdiction of her commissioners. "I came into the kingdom,' said she, "an independent sovereign, to implore the queen's assistance, not to subject myself to her authority. Nor is my spirit so broken by its past misfortunes, or so intimidated by present dangers, as to stoop to any thing unbecoming the majesty of a crowned head, or that will disgrace the ancestors from whom I am descended, and the son to whom I shall leave my throne. If I must be tried, princes alone can be my peers. The queen of England's subjects, however noble their birth may be, are of a rank inferior to mine. Ever since my arrival in this kingdom I have been confined as a prisoner. Its laws never afforded me any protection. Let them not now be perverted in order to take away my life."

The commissioners employed arguments and entreaties to overcome Mary's resolution. They even threatened to proceed according to the forms of law, and to pass sentence against her on account of her contumacy in refusing to plead; she persisted, however, for two days, to decline their jurisdiction. An argument, used by Hatton, the vice-chamberlain, at last prevailed. He told her, that by avoiding a trial, she injured her own reputation, and deprived herself of the only opportunity of setting her innocence in a clear light; and that nothing would be more agreeable to them, or more acceptable to the queen their mistress, than to be convinced, by undoubted evidence, that she had been unjustly loaded with foul aspersions.

No wonder pretexts so plausible should impose on

Consents however to do so. the unwary queen, or that she, unassisted at that time by any friend or counsellor, should not be able to detect and elude all the artifices of Elizabeth's ablest ministers.

In a situation equally melancholy, and under circumstances nearly similar, her grandson, Charles I. refused with the utmost firmness, to acknowledge the usurped jurisdiction of the high court of justice; and posterity has approved his conduct, as suitable to the dignity of a king. If Mary was less constant in her resolution, it must be imputed solely to her anxious desire of vindicating her own honour.

At her appearance before the judges, who were seated in the great hall of the castle, where they received her with much ceremony, she took care to protest, that by condescending to hear and to give an answer to the accusations which should be brought against her, she neither acknowledged the jurisdiction of the court, nor admitted the validity and justice of those acts by which they pretended to try her.

The chancellor, by a counter-protestation, endea-

voured to vindicate the authority of the court.

The accusation opened the charge against her, with all the circumstances of the late conspiracy. Copies of Mary's letters to Mendoza, Babington, Englefield, and Paget, were produced. Babington's confession, those of Ballard, Savage, and the other conspirators, together with the declarations of Naué and Curle, her secretaries, were read, and the whole ranged in the most specious order which the art of the lawyers could devise, and heightened by every colour their cloquence could add.

Mary listened to their harangues attentively, and without emotion. But at the mention of the earl of Arundel's name, who was then confined in the Tower, she broke out into this tender and generous exclamation; "Alas, hew much has the noble house of How-

ard suffered for my sake!"

Her defence. When the queen's counsel had finished, Mary stood up, and with great magnanimity, and equal presence of mind, began her de-

and equal presence of mind, began her defence. She bewailed the unhappiness of her own situation, that after a captivity of nineteen years, during which she had suffered treatment no less cruel than unmerited, she was at last loaded with an accusation. which tended not only to rob her of her right of succession, and to deprive her of life itself, but to transmit her name with infamy to future ages: that, without regarding the sacred rights of sovereignty, she was now subjected to laws framed against private persons; though an anointed queen, commanded to appear before the tribunal of subjects; and, like a common criminal, her honour exposed to the petulant tongues of lawyers, capable of wresting her words, and of misrepresenting her actions: that, even in this dishonourable situation, she was denied the privileges usually granted to criminals, and obliged to undertake her own defence, without the presence of any friend with whom to advise, without the aid of counsel and without the use of her own papers.

She then proceeded to the particular articles in the accusation. She absolutely denied any correspondence with Babington or Ballard: copies only of her pretended letters to them were produced; though nothing less than her hand-writing or subscription was sufficient to convict her of such an odious crime: no proof could be brought that their letters were delivered into her hands, or that any answer was returned by her direction: the confessions of wretches condemned and executed for such a detestable action, were of little weight; fear or hope might extort from them many things inconsistent with truth, nor ought the honour of a queen to be stained by such vile testimony. declaration of her secretaries was not more conclusive; promises and threats might easily overcome the resolution of two strangers; in order to screen themselves, they might throw the blame on her; but they could

discover nothing to her prejudice, without violating, in the first place, the oath of fidelity which they had sworn to her; and their perjury, in one instance, rendered them unworthy of credit in another: the letters to the Spanish ambassador were either nothing more than copies, or contained only what was perfectly innocent: "I have often," continued she, " made such efforts for the recovery of my liberty, as are natural to a human Convinced, by the sad experience of so many years, that it was vain to expect it from the justice or generosity of the queen of England, I have frequently solicited foreign princes, and called upon all my friends to employ their whole interest for my relief. I have likewise endeavoured to procure for the English Catholics some mitigation of the rigour with which they are now treated; and if I could hope, by my death, to deliver them from oppression, I am willing to die for their sake. I wish, however, to imitate the example of Esther, not of Judith, and would rather make intercession for my people, than shed the blood of the meanest creature, in order to save them. I have often checked the intemperate zeal of my adherents, when either the severity of their own persecutions, or indignation at the unheard-of injuries which I have endured, were apt to precipitate them into violent counsels. I have even warned the queen of dangers to which these harsh proceedings exposed herself. And worn out, as I now am, with cares and sufferings, the prospect of a crown is not so inviting, that I should ruin my soul in order to obtain it. I am no stranger to the feelings of humanity, nor unacquainted with the duties of religion, and abhor the detestable crime of assassination, as equally repugnant to both. And, if ever I have given consent by my words, or even by my thoughts, to any attempt against the life of the queen of England, far from declining the judgment of men, I shall not even pray for the mercy of God."

Two different days did Mary appear before the

judges, and in every part of her behaviour maintained the magnanimity of a queen, tempered with the gentleness and modesty of a woman.

Sentence against her. Oct. 25.

The commissioners, by Elizabeth's express command, adjourned, without pronouncing any sentence, to the Star-chamber, in Westminster. When assembled in that place,

Naué and Curle were brought into court, and confirmed their former declaration upon oath; and after reviewing all their proceedings, the commissioners unanimously declared Mary "to be accessary to Babington's conspiracy, and to have imagined divers matters tending to the hurt, death, and destruction of Elizabeth, contrary to the express words of the statute made for the security of the queen's life."

Irregularities in the

It is no easy matter to determine whether the injustice in appointing this trial, or the irregularity in conducting it, were greatest and most flagrant. By what right did Eliza-

beth claim authority over an independent queen? Was Mary bound to comply with the laws of a foreign king-How could the subjects of another prince become her judges? or if such an insult on royalty were allowed, ought not the common forms of justice to have been observed? If the testimony of Babington and his associates were so explicit, why did not Elizabeth spare them for a few weeks, and by confronting them with Mary, overwhelm her with the full conviction of her crimes? Naué and Curle were both alive; wherefore did not they appear at Fotheringay, and for what reason were they produced in the Star-chamber, where Mary was not present to hear what they deposed? Was this suspicious evidence enough to condemn a queen? Ought the meanest criminal to have been found guilty upon such feeble and inconclusive proofs?

It was not, however, on the evidence produced at her trial, that the sentence against Mary was founded. That served as a pretence to justify; but was not the

cause of the riolent steps taken by Elizabeth and her ministers towards her destruction; and was employed to give some appearance of justice to what was the offspring of jealousy and fear. The nation, blinded with resentment against Mary, and solicitous to secure the life of its own sovereign from every danger, observed no irregularities in the proceedings, and attended to no defects in the proof, but grasped at the suspicions and probabilities, as if they had been irrefragable demonstrations.

The parliament confirm the sentence. The parliament met a few days after sentence was pronounced against Mary. In that illustrious assembly more temper and discernment than are to be found among the people, might have been expected. Both

lords and commons, however, were equally under the dominion of popular prejudices and passions, and the same excess of zeal, or of fear, which prevailed in the nation, are apparent in all their proceedings. They entered with impatience upon an inquiry into the conspiracy, and the danger which threatened the queen's life as well as the peace of the kingdom. All the papers which had been produced at Fotheringay were laid before them; and, after many violent invectives against the queen of Scots, both houses unanimously ratified the proceedings of the commissioners by whom she had been tried, and declared the sentence against

and demand the execution of it. her to be just and well founded. Not satisfied with this, they presented a joint address to the queen, beseeching her, as she regarded her own safety, the preservation of the

Protestant religion, the welfare and wishes of her people, to publish the sentence; and without farther delay to inflict on a rival, no less irreclaimable than dangerous, the punishment which she had merited by so many crimes. This request, dictated by fears unworthy of that great assembly, was enforced by reasons still more unworthy. They were drawn not from justice but from conveniency. The most rigorous con-

finement, it was pretended, could not curb Mary's intriguing spirit; her address was found, by long experience, to be an overmatch for the vigilance and jealousy of all her keepers; the severest penal laws could not restrain her adherents, who, while they believed her person to be sacred, would despise any danger to which themselves alone were exposed: several foreign princes were ready to second their attempts, and waited only a proper opportunity for invading the kingdom, and asserting the Scottish queen's title to the crown. life, they contended, was, for these reasons, incompatible with Elizabeth's safety; and if she were spared out of a false clemency, the queen's person, the religion and liberties of the kingdom, could not be one moment secure. Necessity required that she should be sacrificed in order to preserve these; and to prove this sacrifice to be no less just than necessary, several examples in history were produced, and many texts of scripture quoted; but both the one and the other were misapplied, and distorted from their true meaning.

Nothing, however, could be more acceptable to Elizabeth, than an address in this strain. It extricated her out of a situation

tion. extremely embarrassing; and, without depriving her of the power of sparing, it enabled her to punish her rival with less appearance of blame. If she chose the former, the whole honour would redound to her own clemency. If she determined on the latter, whatever was rigorous might now seem to be extorted by the solicitations of her people, rather than to flow from her own inclination. Her answer, however, was in a style which she often used, ambiguous and evasive, under the appearance of openness and candour; full of such professions of regard for her people, as served to heighten their loyalty; of such complaints of Mary's ingratitude, as were calculated to excite their indignation; and of such insinuations that her own life was in danger, as could not fail to keep alive their fears. In the end, she besought them to save her

the infamy and the pain of delivering up a queen, her nearest kinswoman, to punishment; and to consider whether it might not still be possible to provide for the public security, without forcing her to imbrue her hands in royal blood.

The true meaning of this reply was easily understood. The lords and commons renewed their former request with additional importanty, which was far from being either unexpected or offensive. Elizabeth did not return any answer more explicit; and having obtained such a public sanction of her proceedings, there was no longer any reason for protracting this scene of dissimulation; there was even some danger that her feigned difficulties might at last be treated as real ones; she therefore prorogued the parliament, and reserved in her own hands the sole disposal of her rival's fate.

France interposes feebly in behalf of Mary. All the princes in Europe observed the proceedings against Mary with astonishment and horror; and even Henry III., notwithstanding his known aversion to the house of Guise, was obliged to interpose in her behalf, and to appear in defence of the com-

mon rights of royalty. Aubespine, his resident ambassador, and Bellievre, who was sent with an extraordinary commission to the same purpose, interceded for Mary with great appearance of warmth. They employed all the arguments which the cause naturally suggested; they pleaded from justice, from generosity, and humanity; they intermingled reproaches and threats; but to all these Elizabeth continued deaf and inexorable; and having received some intimation of Henry's real unconcern about the fate of the Scottish queen, and knowing his antipathy to all the race of Guise, she trusted that these loud remonstrances would be followed by no violent resentment.

She paid no greater regard to the solicita-James entions of the Scottish king, which, as they were deavours to save his mother's life. urged with greater sincerity, merited more attention. Though her commissioners had been extremely careful to sooth James, by publishing a declaration that their sentence

publishing a declaration that their sentence against Mary did, in no degree, derogate from his honour, or invalidate any title which he formerly possessed; he beheld the indignities to which his mother had been exposed with filial concern, and with the sentiments which became a king. The pride of the Scottish nation was roused, by the insult offered to the blood of their monarchs, and called upon him to employ the most vigorous efforts, in order to prevent or

to revenge the queen's death.

At first, he could hardly believe that Elizabeth would venture upon an action so unprecedented, which tended so visibly to render the persons of princes less sacred in the eyes of the people, and which degraded the regal dignity, of which, at other times, she was so remarkably jealous. But as soon as the extraordinary steps which she took discovered her intention, he dispatched Sir William Keith to London; who, together with Douglas, his ambassador in ordinary, remonstrated, in the strongest terms, against the injury done to an independent queen, in subjecting her to be tried like a private person, and by laws to which she owed no obedience; and besought Elizabeth not to add to this injury by suffering a sentence unjust in itself, as well as dishonourable to the king of Scots, to be put into execution.2

Elizabeth returning no answer to these remonstrances of his ambassador, James wrote to her with his own hand, complaining in the bitterest terms of her conduct, not without threats that both his duty and his honour would oblige him to renounce her friendship, and act as became a son when called to revenge his mother's wrongs.<sup>2</sup> At the same time he assembled the nobles, who promised to stand by him in so good a

<sup>&</sup>lt;sup>2</sup> See App. No. XLIX. Murdin, 573, &c. Birch. Mem. i. 52, <sup>3</sup> Birch. Mem. i. 52.

cause. He appointed ambassadors to France, Spain, and Denmark, in order to implore the aid of these courts; and took other steps towards executing his threats with vigour. The high strain of his letter enraged Elizabeth to such a degree, that she was ready to dismiss his ambassadors without any reply. But his preparations alarmed and embarrassed her ministers, and at their entreaty she returned a soft and evasive answer, promising to listen to any overture from the king, that tended to his mother's safety; and to suspend the execution of the sentence, until the arrival of new ambassadors from Scotland.

Dec. 6.
The sentence
against
Mary published.

Meanwhile, she commanded the sentence against Mary to be published, and forgot not to inform the people, that this was extorted from her by the repeated entreaty of both houses of parliament. At the same time she dispatched lord Buckhurst and Beale to ac-

quaint Mary with the sentence, and how importunately the nation demanded the execution of it; and though she had not hitherto yielded to these solicitations, she advised her to prepare for an event which might become necessary for securing the Protestant religion, as well as quieting the minds of the people. Mary received the message not only without symptoms of fear, but with expressions of triumph. "No wonder," said she, "the English should now thirst for the blood of a foreign prince, they have often offered violence to their own monarchs. But after so many sufferings, death comes to me as a welcome deliverer. I am proud to think that my life is deemed of importance to the Catholic religion, and as a martyr for it I am now willing to die."

She is treated with the utmost rigour. After the publication of the sentence Mary was stripped of every remaining mark of royalty. The canopy of state in her apartment was pulled down; Paulet entered her chambes, and approached her person without any ceremony; and even appeared covered

in her presence. Shocked with these indignities, and offended at this gross familiarity, to which she had never been accustomed, Mary once more Dec. 19. complained to Elizabeth; and at the same time, as her last request, entreated that she would permit her servants to carry her dead body into France, to be laid among her ancestors in hallowed ground; that some of her domestics might be present at her death, to bear witness of her innocence, and firm adherence to the Catholic faith: that all her servants might be suffered to leave the kingdom, and to enjoy those small legacies which she should bestow on them, as testimonies of her affection; and that, in the mean time, her almoner, or some other Catholic priest, might be allowed to attend her, and to assist her in preparing for an eternal world. She besought her, in the name of Jesus, by the soul and memory of Henry VII., their common progenitor, by their near consanguinity, and the royal dignity with which they were both invested, to gratify her in these particulars, and to indulge her so far as to signify her compliance by a letter under her own hand. Whether Mary's letter was ever delivered to Elizabeth is uncertain. No answer was returned. and no regard paid to her requests. She was offered a Protestant bishop or dean to attend her. Them she rejected, and without any clergyman to direct her devotions, she prepared, in great tranquillity, for the approach of death, which she now believed to be at no great distance.d

1587.
James renews his
solicitations in
her behalf.
Jan. 1.

James, without losing a moment, sent new ambassadors to London. These were the master of Gray, and Sir Robert Melvil. In order to remove Elizabeth's fears, they offered that their master would become bound that no conspiracy should be undertaken against her person, or the peace of the kingdom,

with Mary's consent; and for the faithful performance of this, would deliver some of the most considerable of the Scottish nobles as hostages. If this were not

45 thought sufficent, they proposed that Mary should resign all her rights and pretensions to her son, from whom nothing injurious to the Protestant religion, or inconsistent with Elizabeth's safety, could be feared. The former proposal Elizabeth rejected as insecure; the latter, as dangerous. The ambassadors were then instructed to talk in a higher tone; and Melvil executed the commission with fidelity and with zeal. But Gray, with his usual perfidy, deceived his master, who trusted him with a negotiation of so much importance, and betrayed the queen whom he was employed to save. He encouraged and urged Elizabeth to execute the sentence against her rival. He often repeated the old proverbial sentence, "The dead cannot bite." And whatever should happen, he undertook to pacify the king's rage, or at least to prevent any violent effects of his resentment.e

Elizabeth's anxiety and dissimulation.

Elizabeth, meanwhile, discovered all the symptoms of the most violent agitation and disquietude of mind. She shunned society, she was often found in a melancholy and musing posture, and repeating with much emphasis these sentences, which she bor-

rowed from some of the devices then in vogue; Aut fer aut feri; ne feriure, feri. Much, no doubt, of this apparent uneasiness must be imputed to dissimulation: it was impossible, however, that a princess, naturally so cautious as Elizabeth, should venture on an action. which might expose her memory to infamy, and her life and kingdom to danger, without reflecting deeply. and hesitating long. The people waited her determination in suspense and anxiety; and lest their fear or their zeal should subside, rumours of danger were artfully invented and propagated with the utmost industry. Aubespine, the French ambassador, was accused of having suborned an assassin to murder the queen. The Spanish fleet was said by some to be already arrived at Milford-haven. Others affirmed that the duke

e Spotsw. 352. Murdin, 568. See App. No. L.

of Guise had landed with a strong army in Sussex. Now, it was reported that the northern counties were up in arms; next day, that the Scots had entered England with all their forces; and a conspiracy, it was whispered, was on foot for seizing the queen and burning the city. The panic grew every day more violent; and the people, astonished and enraged, called for the execution of the senterce against Mary, as the only thing which could restore tranquillity to the kingdom.

Warrant for Mary's execution signed. Feb. 1. While these sentiments prevailed among her subjects, Elizabeth thought she might safely venture to strike the blow, which she had so long meditated. She commanded Davison, one of the secretaries of state, to

bring to her the fatal warrant; and her behaviour on that occasion plainly shewed, that it is not to humanity that we must ascribe her forbearance hitherto. At the very moment she was signing the writ which gave up a woman, a queen, and her own nearest relation, into the hands of the executioner, she was capable of jesting. "Go," says she to Davison, "and tell Walsingham what I have now done, though I am afraid he will die for grief when he hears it." Her chief anxiety was how to secure the advantages which would? arise from Mary's death, without appearing to have given her consent to a deed so odious. She often hinted to Paulet and Drury, as well as to some other courtiers, that now was the time to discover the sincerity of their concern for her safety, and that she expected their zeal would extricate her out of her present perplexity. But they were wise enough to seem not to understand her meaning. Even after the warrant was signed, she commanded a letter to be written to Paulet in less ambiguous terms, complaining of his remissness in sparing so long the life of her capital enemy, and begging him to remember at last what was incumbent on him as an affectionate subject, as well as what he was bound to do by the oath of association, and to deliver his soveneign from continual fear and danger, by shortening the days of his prisoner. Paulet, though rigorous and harsh, and often brutal in the discharge of what he thought his duty, as Mary's keeper, was nevertheless a man of honour and integrity. He rejected the proposal with disdain; and lamenting that he should ever have been deemed capable of acting the part of an assassin, he declared that the queen might dispose of his life at her pleasure, but that he would never stain his own honour, nor leave an everlasting mark of infamy on his posterity, by lending his hand to perpetrate so foul a crime. On the receipt of this answer, Elizabeth became extremely peevish; and calling him a dainty and precise fellow, who would promise much but perform nothing, she proposed to employ one Wingfield, who had both courage and inclination to strike the blow.g But Davison remonstrating against this, as a deed dishonourable in itself, and of dangerous example, she again declared her intention that the sentence pronounced by the commissioners should be executed according to law; and as she had already signed the warrant, she begged that no farther application might be made to her on that head. By this, the privy-counsellors thought themselves sufficiently authorized to proceed; and prompted, as they pretended, by zeal for the queen's safety, or instigated, as is more probable, by the apprehension of the danger to which they would themselves be exposed, if the life of the queen of Scots were spared, they assembled in the council-chamber; and by a letter under all their hands, empowered the earls of Shrewsbury and Kent, together with the high sheriff of the county, to see the sentence put in execution.h

Mary's behaviour at her death. On Tuesday the seventh of February, the two earls arrived at Fotheringay, and demanded access to the queen, read in her presence the warrant for execution, and rez

g Biog. Britan. article Davison.

h Camd. 534. Strype, iii. 361. 364.

quired her to prepare to die next morning. Mary heard them to the end without emotion, and crossing herself in the name of the Father, and of the Son, and of the Holy Ghost, "That soul," said she, "is not worthy the joys of Heaven, which repines because the body must endure the stroke of the executioner; and though I did not expect that the queen of England would set the first example of violating the sacred person of a sovereign prince, I willingly submit to that which Providence has decreed to be my lot;" and laying her hand on a Bible, which happened to be near her, she solemnly protested that she was innocent of that conspiracy which Babington had carried on against Elizabeth's life. She then mentioned the requests contained in her letter to Elizabeth, but obtained no satisfactory answer. entreated with particular earnestness, that now in her last moments her almoner might be suffered to attend her, and that she might enjoy the consolation of those pious institutions prescribed by her religion. Even this favour, which is usually granted to the vilest criminal, was absolutely denied.

Her attendants, during this conversation, were bathed in tears, and though overawed by the presence of the two earls, with difficulty suppressed their anguish; but no sooner did Kent and Shrewsbury withdraw, than they ran to their mistress, and burst out into the most passionate expressions of tenderness and sorrow. Mary, however, not only retained perfect composure of mind herself, but endeavoured to moderate their excessive grief; and falling on her knees with all her domestics round her, she thanked Heaven that her sufferings were now so near an end, and prayed that she might be enabled to endure what still remained with decency and with fortitude. The greater part of the evening she employed in settling her worldly affairs. her testament with her own hand. Her money, her jewels, and her clothes, she distributed among her servants, according to their rank or mefit. She wrote a

short letter to the king of France, and another to the duke of Guise, full of tender but magnanimous sentiments, and recommended her soul to their prayers. and her afflicted servants to their protection. At supper she ate temperately, as usual, and conversed not only with ease, but with cheerfulness; she drank to every one of her servants, and asked their forgiveness, if ever she had failed in any part of her duty towards them. At her wonted time she went to bed, and slept calmly a few hours. Early in the morning she retired into her closet, and employed a considerable time in devotion. At eight o'clock the high sheriff and his officers entered her chamber, and found her still kneeling at the altar. She immediately started up, and with a majestic mien, and a countenance undismayed, and even cheerful, advanced towards the place of execution, leaning on two of Paulet's attendants. dressed in a mourning habit, but with an elegance and splendour which she had long laid aside except on a few festival days. An Agnus Der hung by a pomander chain at her neck; her beads at her girdle; and in her hand she carried a crucifix of ivory. At the bottom of the stairs, the two earls, attended by several gentlemen from the neighbouring counties, received her; and there Sir Andrew Melvil, the master of her household, who had been secluded for some weeks from her presence, was permitted to take his last farewell. the sight of a mistress whom he tenderly loved, in such a situation, he melted into tears; and as he was bewailing her condition, and complaining of his own hard fate, in being appointed to carry the account of such a mournful event into Scotland, Mary replied, "Weep not, good Melvil, there is at present great cause for rejoicing. Thou shalt this day see Mary Stuart delivered from all her cares, and such an end put to her tedious sufferings, as she has long expected. Bear witness that I die constant in my religion; firm in. my fidelity towards Scotland; and unchanged in my affection to France. Commend me to my son. Tell

him I have done nothing injurious to his kingdom, to his honour, or to his rights; and God forgive all those

who have thirsted without cause for my blood.

With much difficulty, and after many entreaties, she prevailed on the two earls to allow Melvil, together with three of her men-servants and two of her maids. to attend her to the scaffold. It was erected in the same hall where she had been tried, raised a little above the floor, and covered, as well as a chair, the cushion, and block, with black cloth. Mary mounted the steps with alacrity, beheld all this apparatus of death with an unaltered countenance, and signing herself with the cross, she sat down in the chair. Beale read the warrant for execution with a loud voice, to which she listened with a careless air, and like one occupied in other thoughts. Then the dean of Peterborough began a devout discourse, suitable to her present condition, and offered up prayers to Heaven in her behalf; but she declared that she could not in conscience hearken to the one, nor join with the other; and kneeling down, repeated a Latin prayer. When the dean had finished his devotions, she, with an audible voice, and in the English tongue, recommended unto God the afflicted state of the church, and prayed for prosperity to her son, and for a long life and peaceable reign to Elizabeth. She declared that she hoped for mercy only through the death of Christ, at the foot of whose image she now willingly shed her blood; and lifting up and kissing the crucifix, she thus addressed it: "As thy arms, O Jesus, were extended on the cross; so with the outstretched arms of thy mercy recefve me, and forgive my sins."

She then prepared for the block, by taking off her veil and upper garments; and one of the executioners rudely endeavouring to assist, she gently checked him, and said with a smile, that she had not been accustomed to undress before so many spectators, nor to be served by such valets. With calm but undaunted fortitude, she laid her neck on the block; and while

one executioner held her hands, the other, at the second stroke, cut off her head, which falling out of its attire, discovered her hair already grown quite grey with cares and sorrows. The executioner held it up still streaming with blood, and the dean crying out, "So perish all queen Elizabeth's enemies," the earl of Kent alone answered "Amen." The rest of the spectators continued silent, and drowned in tears; being incapable, at that moment, of any other sentiments but those of pity or admiration.

Sentiments of historians concerning her. Such was the tragical death of Mary, queen of Scots, after a life of forty-four years and two months, almost nineteen years of which she passed in captivity. The political parties which were formed in the kingdom during her reign, have subsisted under vari-

ous denominations, ever since that time. The rancour with which they were at first animated, hath descended to succeeding ages, and their prejudices, as well as their rage, have been perpetuated, and even augmented. Among historians, who were under the dominion of all these passions, and who have either ascribed to her every virtuous and amiable quality, or have imputed to her all the vices of which the human heart is susceptible, we search in vain for Mary's real character. She neither merited the exaggerated praises of the one, nor the undistinguished censure of the other.

To all the charms of beauty, and the utmost elegance of external form, she added
those accomplishments which render their
impression irresistible. Polite, affable, insinuating,
sprightly, and capable of speaking and of writing with
equal ease and dignity. Sudden, however, and violent
in all her attachments; because her heart was warm
and unsuspicious. Impatient of contradiction; because
she had been accustomed from her infancy to be treated
as a queen. No stranger, on some occasions, to dissi-

k Camd. 534. Spotsw. 355. Jebb, ii. 300. Strype, iii. 383. See App. No. LI.

mulation; which, in that perfidious court where she received her education, was reckoned among the necessary arts of government. Not insensible of flattery, or unconscious of that pleasure with which almost every woman beholds the influence of her own beauty. Formed with the qualities which we love, not with the talents that we admire; she was an agreeable woman. rather than an illustrious queen. The vivacity of herspirit, not sufficiently tempered with sound judgment, and the warmth of her heart, which was not at all times under the restraint of discretion, betrayed her both into errors and into crimes. To say that she was always unfortunate will not account for that long and almost uninterrupted succession of calamities which befel her; we must likewise add, that she was often imprudent. Her passion for Darnley was rash, youthful, and excessive; and though the sudden transition to the opposite extreme, was the natural effect of her ill-requited love, and of his ingratitude, insolence, and brutality; yet neither these, nor Bothwell's artful address and important services, can justify her attachment to that nobleman. Even the manners of the age, licentious as they were, are no apology for this unhappy passion; nor can they induce us to look on that tragical and infamous scene which followed upon it, with less abhorrence. Humanity will draw a veil over this part of her character which it cannot approve, and may, perhaps. prompt some to impute some of her actions to her situation, more than to her disposition; and to lament the unhappiness of the former, rather than excuse the perverseness of the latter. Mary's sufferings exceed, both in degree and in duration, those tragical distresses which fancy has feigned to excite sorrow and commiseration; and while we survey them, we are apt altogether to forget her frailties, we think of her faults with less indignation, and approve of our tears, as if they were shed for a person who had attained much nearer tô pure virtue.

With regard to the queen's person, a circumstance

not to be omitted in writing the history of a female reign, all contemporary authors agree in ascribing to Mary the utmost beauty of countenance, and elegance of shape, of which the human form is capable. hair was black, though, according to the fashion of that age, she frequently wore borrowed locks, and of different colours. Her eyes were a dark grey; her complexion was exquisitely fine; and her hands and arms remarkably delicate, both as to shape and colour. Her stature was of a height that rose to the majestic. danced, she walked, and rode with equal grace. taste for music was just, and she both sung and played upon the lute with uncommon skill. Towards the end of her life, long confinement, and the coldness of the houses in which she had been imprisoned, brought on a rheumatism, which often deprived her of the use of her limbs. No man, says Brantome, ever beheld her person without admiration and love, or will read her history without sorrow.

None of her women were suffered to come near her dead body, which was carried into a room adjoining to the place of execution, where it lay for some days, covered with a coarse cloth torn from a billiard table. The block, the scaffold, the aprons of the executioners. and every thing stained with her blood, were reduced to ashes. Not long after, Elizabeth appointed her body to be buried in the cathedral of Peterborough with royal magnificence. But this vulgar artifice was employed in vain; the pageantry of a pompous funeral did not efface the memory of those injuries which laid Mary in her grave. James, soon after his accession to the English throne, ordered her body to be removed to Westminster-abbey, and to be deposited among the mo-

narchs of England.

Elizabeth affects to lament Mary's death.

Elizabeth affected to receive the accounts of Mary's death with the most violent emotions of surprise and concern. Sighs, tears, lamentations, and mourning, were all employed to display the reality and greatness of her sorrow. Evident marks of dissimulation and artifice may be traced through every period of Elizabeth's proceedings against the life of the Scottish queen. The commission for bringing Mary to a public trial was seemingly extorted from her by the entreaties of her privy-counsellors. She delayed publishing the sentence against her till she was twice solicited by both houses of parliament. Nor did she sign the warrant for execution without the utmost apparent reluctance. One scene more of the boldest and most solemn deceit remained to be exhibited. took to make the world believe that Mary had been put to death without her knowledge, and against her will. Davison, who neither suspected her intention nor his own danger, was her instrument in carrying on this artifice, and fell a victim to it.

It was his duty, as secretary of state, to lay before her the warrant for execution, in order to be signed; and, by her command, he carried it to the great seal. She pretended, however, that she had charged him not to communicate what she had done to any person, nor to suffer the warrant to go out of his hands, without her express permission; that, in contempt of this order, he had not only revealed the matter to several of her ministers, but had, in concert with them, assembled her privy-counsellors, by whom, without her consent or knowledge, the warrant was issued, and the earls of Shrewsbury and Kent empowered to put it in execution. Though Davison denied all this, and with circumstances which bear the strongest marks of truth and credibility; though it can scarcely be conceived that her privycouncil, composed of the persons in whom she most confided, of her ministers and favourites, would assemble within the walls of her palace, and venture to transact a matter of so much importance without her privity, and contrary to her inclination; yet so far did she carry her dissimulation, that with all the signs of displeasure and of rage, she banished most of her counsellors out of her presence; and treated Burleigh, in particular, so

harshly, and with such marks of disgust, that he gave himself up for lost, and in the deepest affliction wrote to the queen, begging leave to resign all his places. that he might retire to his own estate. Davison she instantly deprived of his office, and committed him a close prisoner to the Tower. He was soon March. after brought to a solemn trial in the Starchamber, condemned to pay a fine of ten thousand pounds, and to be imprisoned during the queen's pleasure. He languished several years in confinement, and never recovered any degree of favour or of power. As her jealousy and fear had bereaved the queen of Scots of life, in order to palliate this part of her conduct, Elizabeth made no scruple of sacrificing the reputation and happiness of one of the most virtuous and able men in her kingdom.t

Elizabeth endeavours to sooth James. This solemn farce, for it deserves no better name, furnished Elizabeth, however, with an apology to the king of Scots. As the prospect of his mother's danger had excited the king's filial care and concern, the ac-

count of her death filled him with grief and resentment. His subjects felt the dishonour done to him and to the nation. In order to sooth both, Elizabeth instantly dispatched Robert Cary, one of lord Hunsdon's sons. with a letter, expressing her extreme affliction on account of that miserable accident, which, as she pretended, had happened far contrary to her appointment or intention. James would not permit her messenger to enter Scotland, and with some difficulty received a memorial which he sent from Berwick. contained the tale concerning Davison, dressed up with all the circumstances which tended to exculpate Elizabeth, and to throw the whole blame on his rashness or treachery. Such a defence gave little satisfaction, and was considered as mockery added to insult; and many of the nobles, as well as the king, breathed nothing but revenge. Elizabeth was extremely soli-

<sup>1</sup> Camd. 536. Strype, iii. 370. See App. No. LII. Cab. 229, &c.

citous to pacify them, and she wanted neither able instruments nor plausible reasons, in order to accomplish this. Leicester wrote to the king, and Walsingham to secretary Maitland. They represented the certain destruction to which James would expose himself, if, with the forces of Scotland alone, he should venture to attack a kingdom so far superior in power; that the history of past ages, as well as his mother's sad experience, might convince him, that nothing could be more dangerous, or deceitful, than dependance on foreign aid; that the king of France would never wish to see the British kingdoms united under one monarch, nor contribute to invest a prince so nearly allied to the house of Guise with such formidable power; that Philip might be a more active ally, but would certainly prove a more dangerous one; and, under pretence of assisting him, would assert his own right to the English crown, which he already began openly to claim; that the same statute, on which the sentence of death against his mother had been founded, would justify the excluding him from the succession to the crown; that the English, naturally averse from the dominion of strangers, would not fail, if exasperated by his hostilities, to apply it in that manner; that Elizabeth was disposed to repair the wrongs which the mother had suffered, by her tenderness and affection towards the son; and that, by engaging in a fruitless war, he would deprive himself of a noble inheritance, which, by cultivating her friendship, he must infallibly obtain. These representations, added to the consciousness of his own weakness, to the smallness of his revenues, to the mutinous spirit of some of the nobles, to the dubious fidelity of others, and to the influence of that faction which was entirely at Elizabeth's devotion, convinced James that a war with England, however just, would, in the present juncture be altogether impolitical. All these considerations induced him to stifle his resentment; to appear satisfied with the punishment inflicted on Davison; and to preserve all the semblances of friendship with the English court. In this manner did the cloud which threatened such a storm pass away. Mary's death, like that of a common criminal, remained unavenged by any prince; and, whatever infamy Elizabeth might incur, she was exposed to no new danger on that account.

Mary's death, however, proved fatal to Disgrace of the master of Gray, and lost him the king's the master favour, which he had for some time posof Gray. He was become as odious to the sessed. nation as favourites, who acquire power without merit, and exercise it without discretion, usually are. treacherous part which he had acted during his late embassy was no secret, and filled James, who at length came to the knowledge of it, with astonishment. The courtiers observed the symptoms of disgust arising in the king's mind, his enemies seized the opportunity, and Sir William Stewart, in revenge of the perfidy with which Gray had betrayed his brother captain May 10. James, publicly accused him before a convention of nobles, not only of having contributed, by his advice and suggestions, to take away the life of the queen, but of holding correspondence with Popish princes, in order to subvert the religion established in the kingdom. Gray, unsupported by the king, deserted by all, and conscious of his own guilt, made a feeble defence. He was condemned to perpetual banishment, a punishment very unequal to his crimes. But the king was unwilling to abandon one whom he had once favoured so highly, to the rigour of justice, and lord Hamilton, his near relation, and the other nobles who had lately returned from exile, in gratitude for the zeal with which he had served them, interceded warmly in his behalf.

Having thus accomplished the destruction of one of his enemies, captain James Stewart thought the juncture favourable for prosecuting his revenge on them all. He singled out secretary Maitland, the most emi-

m Spotsw. 362. Cald. iv. 13, 14. Strype, 377.

nent both for abilities and enmity to him; and offered to prove that he was no less accessary than Gray to the queen's death, and had even formed a design of delivering up the king himself into the hands of the English. But time and absence had, in a great measure, extinguished the king's affection for a minion who so little deserved it. All the courtiers combined against him as a common enemy; and, instead of gaining his point, he had the mortification to see the office of chancellor conferred upon Maitland, who, together with that dignity, enjoyed all the power and influence of a prime minister.

In the assembly of the church, which met this year, the same hatred to the order of bishops, and the same jealousy and fear of their encroachments, appeared. But as the king was now of full age, and a parliament was summoned on that occasion, the clergy remained satisfied with appointing some of their number to represent their grievances to that court, from which great

things were expected.

The king attempts to unite the nobles.

Previous to this meeting of parliament, James attempted a work worthy of a king. The deadly feuds which subsisted between many of the great families, and which were transmitted from one generation to another

transmitted from one generation to another, weakened the strength of the kingdom; contributed, more than any other circumstance, to preserve a fierce and barbarous spirit among the nobles; and proved the occasion of many disasters to themselves and to their country. After many preparatory negotiations, he invited the contending parties to a royal entertainment in the palace of Holyrood-house; and partly by his authority, partly by his entreaties, obtained their promise to bury their dissensions in perpetual oblivion. From thence he conducted them, in solemn procession, through the streets of Edinburgh, marching by pairs, each hand in hand with his enemy. A collation of wine and sweetmeats was prepared at the public cross, and there they drank to each other with all the signs

of reciprocal fargiveness and of future friendship. The people, who were present at a spectacle so unusual, conceived the most sanguine hopes of seeing concord and tranquillity established in every part of the kingdom, and testified their satisfaction by repeated acclamations. Unhappily, the effects of this reconciliation were not correspondent either to the pious endeavours of the king, or to the fond wishes of the people.

The first care of the parliament was the security of the Protestant religion. All the laws passed in its favour, since the Reformation, were ratified; and a new and severe one was enacted against seminary priests and Jesuits, whose restless industry in making proselytes, brought many of them into Scotland about this time. Two acts of this parliament deserve more particular notice on account of the consequences with

The one respected the lands of the church.

which they were followed.

General an-As the public revenues were not sufficient for nexations defraying the king's ordinary charges; as of churchthe administration of the government belands. came more complicated and more expensive; as James was naturally profuse, and a stranger to economy; it was necessary, on all these accounts, to provide some fund proportioned to his exigencies. But no considerable sum could be levied on the commons, who did not enjoy the benefit of an extensive commerce. The nobles were unaccustomed to bear the burden of heavy taxes. The revenues of the church were the only source whence a proper supply could be drawn. Notwithstanding all the depredations of the laity since the Reformation, and the various devices which they had employed to seize the churchlands, some considerable portion of them remained still unalienated, and were held either by the bishops who possessed the benefices, or were granted to laymen during pleasure. . All these lands were, in this parlia-

<sup>&</sup>quot; Spotsw. 164. Cald. iv. 13.

ment, annexed, by one general law, o to the crown, and the king was empowered to apply the rents of them to his own use. The tithes alone were reserved for the maintenance of the persons who served the cure, and the principal mansion-house, with a few acres of land, by way of glebe, allotted for their residence. great accession of property, it is natural to conclude that the king must have acquired a vast increase of power, and the influence of the nobles have suffered a proportional diminution. The very reverse of this seems, however, to have been the case. grants of church-lands, prior to this act, were thereby confirmed; and titles, which were formerly reckoned precarious, derived thence the sanction of parliamentary authority. James was likewise authorized, during a limited time, to make new alienations; and such was the facility of his temper, ever ready to yield to the solicitations of his servants, and to gratify their most extravagant demands, that not only during the time limited, but throughout his whole reign, he was continually employed in bestowing, and his parliament in ratifying, grants of this kind to his nobles; hence little advantage accrued to the crown from that which might have been so valuable an addition to its revenues. The bishops, however, were great sufferers by the law. But at this juncture neither the king nor his ministers were solicitous about the interests of an order of men, odious to the people, and persecuted by the clergy. Their enemies promoted the law with the utmost zeal. The prospect of sharing in their spoils induced all parties to consent to it; and after a step so fatal to the wealth and power of the dignified clergy, it was no difficult matter to introduce that change in the government of the church which soon after took place.p

Lesser barrons admitted into

The change which the other statute produced in the civil constitution was no less remarkable. Under the feudal system, every freeholder, or immediate vassal of

the crown, had a right to be present in parby their reliament. These freeholders were originally presentafew in number, but possessed of great and tives. extensive property. By degrees these vast possessions were divided by the proprietors themselves, or parcelled out by the prince, or split by other accidents. The number of freeholders became greater, and their condition more unequal; besides the ancient barons, who preserved their estates and their power unimpaired, there arose another order, whose rights were the same, though their wealth and influence But, in rude ages, when the art of were far inferior. government was extremely imperfect, when parliaments were seldom assembled, and deliberated on matters little interesting to a martial people, few of the lesser barons took their seats, and the whole parliamentary jurisdiction was exercised by the greater barons, in conjunction with the ecclesiastical order. James I., fond of imitating the forms of the English constitution, to which he had been long accustomed, and desirous of providing a counterpoise to the power of the great nobles, procured an act in the year one thousand four hundred and twenty-seven, dispensing with the personal attendance of the lesser barons, and empowering those in each county to choose two commissioners to represent them in parliament. This law, like many other regulations of that wise prince, produced little effect. All the king's vassals continued, as formerly, possessed of a right to be present in parliament; but, unless in some extraordinary conjunctures, the greater barons alone attended. But, by means of the Reformation, the constitution had undergone a great change. The aristocratical power of the nobles had been much increased. and the influence of the ecclesiastical order, which the crown usually employed to check their usurpation, and to balance their authority, had diminished in propor-Many of the abbeys and priories had been erected into temporal peerages; and the Protestant bishops, an indigent race of men, and odious to the

nation, were far from possessing the weight and credit which their predecessors derived from their own exorbitant wealth and the superstitious reverence of the people. In this situation, the king had recourse to the expedient employed by James I., and obtained a law reviving the statute of one thousand four hundred and twenty-seven; and from that time the commons of Scotland have sent their representatives to parliament. An act, which tended so visibly to abridge their authority, did not pass without opposition from many of the But as the king had a right to summon the lesser barons to attend in person, others were apprehensive of seeing the house filled with a multitude of his dependants, and consented the more willingly to a law which laid them under the restriction of appearing only by their representatives.

1588. The approach of the Spanish armada. The year one thousand five hundred and eighty-eight began with a universal expectation throughout all Europe, that it was to be distinguished by wonderful events and revolutions. Several astrologers, according to the accounts of contemporary historians,

had predicted this; and the situation of affairs in the two principal kingdoms of Europe was such, that a sagacious observer, without any supernatural intelligence, might have hazarded the prediction, and have foreseen the approach, of some grand crisis. France, it was evident, from the astonishing progress of the league, conducted by a leader whose ambition was restrained by no scruples, and whose genius had hitherto surmounted all difficulties; as well as from the timid, variable, and impolitic councils of Henry III., that either that monarch must submit to abandon the throne, of which he was unworthy, or by some sudden and daring blow cut off his formidable rival. Accordingly, in the beginning of the year, the duke of Guise drove his master out of his capital city, and forced him to conclude a peace, which left him only the shadow of royalty; and before the year expired,

he himself fells a victim to the resentment and fear of Henry, and to his own security. In Spain the operations were such as promised something still more uncommon. During three years Philip had employed all the power of his European dominions, and exhausted the treasures of the Indies, in vast preparations for war. A fleet, the greatest that had ever appeared in the ocean, was ready to sail from Lisbon, and a numerous land army was assembled to embark on board of it. Its destination was still unknown, though many circumstances made it probable that the blow was aimed, in the first place, against England. Elizabeth had long given secret aid to the revolted provinces in the Low-Countries, and now openly afforded them her protection. A numerous body of her troops was in their service; the earl of Leicester commanded their armies; she had great sway in the civil government of the republic; and some of its most considerable towns were in her possession. Her fleets had insulted the coasts of Spain, intercepted the galleons from the West Indies, and threatened the colonies there. Roused by so many injuries, allured by views of ambition, and animated by a superstitious zeal for propagating the Romish religion, Philip resolved not only to invade, but to conquer England, to which his descent from the house of Lancaster, and the donation of pope Sixtus V. gave him, in his own opinion, a double title.

Conduct of James on that ocElizabeth saw the danger approach, and prepared to encounter it. The measures for the defence of her kingdom were concerted and carried on with the wisdom and vigour which distinguished her reign. Her chief

care was to secure the friendship of the king of Scots. She had treated the queen his mother with a rigour unknown among princes; she had often used himself harshly, and with contempt; and though he had hitherto prudently suppressed his resentment of these injuries, she did not believe it to be altogether extinguished, and was afraid that, in her present situation.

it might burst out with fatal violence. Philip, sensible how much an alliance with Scotland would facilitate his enterprise, courted James with the utmost assiduity. He excited him to revenge his mother's wrong; he flattered him with the hopes of sharing his conquests; and offered him in marriage his daughter the infanta Isabella. At the same time, Scotland swarmed with priests, his emissaries, who seduced some of the nobles to Popery, and corrupted others with bribes and promises. Huntly, Errol, Crawford, were the heads of a faction which openly espoused the interest of Spain. Lord Maxwell, arriving from that court, began to assemble his followers, and to take arms, that he might be ready to join the Spaniards. In order to counterbalance all these. Elizabeth made the warmest professions of friendship to the king; and Ashby, her ambassador, entertained him with magnificent hopes and promises. He assured him, that his right of succession to the crown should be publicly acknowledged in England; that he should be created a duke in that kingdom; that he should be admitted to some share in the government; and receive a considerable pension annually. James, it is probable, was too well acquainted with Elizabeth's arts, to rely entirely on these promises. But he understood his own interest in the present juncture, and pursued it with much steadiness. rejected an alliance with Spain, as dangerous. fused to admit into his presence an ambassador from the pope. He seized colonel Semple, an agent of the prince of Parma. He drove many of the seminary priests out of the kingdom. He marched suddenly to Dumfries, dispersed Maxwell's followers, and took him prisoner. In a convention of the nobles, he declared his resolution to adhere inviolably to the league with England; and without listening to the suggestions of revenge, determined to act in concert with Elizabeth, against the common enemy of the Protestant faith. He put the kingdom in a posture of defence, and levied troops to obstruct the landing of the Spaniards. He

offered to send an army to Elizabeth's assistance, and told her ambassador that he expected no other favour from the king of Spain, but that which Polyphemus had promised to Ulysses, that when he had devoured all his companions, he would make him his last morsel.

A national covenant in defence of religion. The zeal of the people, on this occasion, was not inferior to that of the king; and the extraordinary danger with which they were threatened, suggested to them an extraordinary expedient for their security. A bond

was framed for the maintenance of true religion, as well as the defence of the king's person and government, in opposition to all enemies, foreign and domestic. This contained a confession of the Protestant faith, a particular renunciation of the errors of Popery, and the most solemn promises, in the name, and through the strength of God, of adhering to each other in supporting the former, and contending against the latter, to the utmost of their power." The king, the nobles, the clergy, and the people, subscribed with equal alacrity. Strange or uncommon as such a combination may now appear, many circumstances contributed at that time to recommend it, and to render the idea familiar to the Scots. When roused by an extraordinary event, or alarmed by any public danger, the people of Israel were accustomed to bind themselves, by a solemn covenant, to adhere to that religion which the Almighty had established among them; this the Scots considered as a sacred precedent, which it became them to imitate. In that age, no considerable enterprise was undertaken in Scotland, without a bond of mutual defence, which all concerned reckoned necessary for their security. The form of this religious confederacy is plainly borrowed from those political ones, of which so many instances have occurred; the articles, stipulations, and peculiar modes of expression, are exactly the same in both. Almost all the considerable Popish

q Camd. 544. Johnst. 139. Spotsw. 369.

r Dunlop's Collect. of Confess. vol. ii. 108.

princes were then joined in a league for extirpating the reformed religion, and nothing could be more natural, or seemed more efficacious, than to enter into a counter-association; in order to oppose the progress of that formidable conspiracy. To these causes did the covenant, which is become so famous in history, owe its origin. It was renewed at different times during the reign of James.5 It was revived with great solemnity, though with considerable alterations, in the year one thousand six hundred and thirty-eight. It was adopted by the English in the year one thousand six hundred and forty-three, and enforced by the civil and ecclesiastical authority of both kingdoms. The political purposes to which it was then made subservient, and the violent and unconstitutional measures which it was then employed to promote, it is not our province to explain. But at the juncture in which it was first introduced, we may pronounce it to have been a prudent and laudable device for the defence of the religion and liberties of the nation; nor were the terms in which it was conceived, other than might have been expected from men alarmed with the impending danger of Popery, and threatened with an invasion by the most bigoted and most powerful prince in Europe.

Philip's eagerness to conquer England did not inspire him either with the vigour or dispatch necessary to ensure the success of so mighty an enterprise. His fleet, which ought to have sailed in April, did not enter the English channel till the middle of July. It hovered many days on the coast, in expectation of being joined by the prince of Parma, who was blocked up in the ports of Flanders by a Dutch squadron. Continual

The armada defeated. disasters pursued the Spaniards during that time; successive storms and battles, which were well known, conspired with their own ill-conduct to disappoint their enterprise.

And, by the blessing of Providence, which watched with remarkable care over the Protestant religion and

the liberties of Britain, the English valour scattered and destroyed the armada, on which Philip had arrogantly bestowed the name of Invincible. After being driven out of the English seas, their Shattered ships were forced to steer their course towards Spain, round Scotland and Ireland. Many of them suffered shipwreck on these dangerous and unknown coasts. Though James kept his subjects under arms, to watch the motions of the Spaniards, and to prevent their landing in a hostile manner, he received with great humanity seven hundred who were forced ashore by a tempest, and, after supplying them with necessaries, permitted them to return into their own country.

On the retreat of the Spaniards, Elizabeth sent an ambassador to congratulate with James, and to compliment him on the firmness and generosity he had discovered during a conjuncture so dangerous. But none of Ashby's promises were any longer remembered; that minister was even accused of having exceeded his powers, by his too liberal offers; and conscious of his own falsehood, or ashamed of being disowned by his

court, he withdrew secretly out of Scotland.

Philip, convinced by fatal experience of 1589. his own rashness in attempting the conquest Philip's inof England, by a naval armament, equipped trigues in at so great a distance, and subjected, in all Scotland. its operations, to the delays, and dangers, and uncertainties, arising from seas and wind, resolved to make his attack in another form, and to adopt the plan which the princes of Lorrain had long meditated, of invading England through Scotland. A body of his troops, he imagined, might be easily wafted over frem the Low-Countries to that kingdom, and if they could once obtain footing, or procure assistance there, the frontier of England was open and defenceless, and the northern counties full of Roman Catholics, who would receive them with open arms. Meanwhile a descent might be threatened on the southern coast, which

t Johnst. 134. Camd. 548. Murdin, 635. 788.

would divide the English army, distract their councils, and throw the whole kingdom into terrible convulsions. In order to prepare the way for the execution of this design, he remitted a considerable sum of money to Bruce, a seminary priest in Scotland, and employed him, together with Hay, Creighton, and Tyrie, Scottish Jesuits, to gain over as many persons of distinctions.

Popish nobles conspire against the king.

tion as possible to his interest. Zeal for Popery, and the artful insinuations of these emissaries, induced several noblemen to favour a measure which tended so manifestly to the destruction of their country. Huntly,

though the king had lately given him in marriage the daughter of his favourite the duke of Lennox, continued warmly attached to the Romish church. Crawford and Errol were animated with the zeal of new converts. 'They all engaged in a correspondence with the prince of Parma, and, in their letters to him, offered their service to the king of Spain, and undertook with the aid of six thousand men, to render him master of Scotland, and to bring so many of their vassals into the field, that he should be able to enter England with a numerous army. Francis Stewart, grandson of James V., whom the king had created earl of Bothwell, though influenced by no motive of religion, for he still adhered to the Protestant faith, was prompted merely by caprice, and the restlessness of his nature, to join in this treasonable correspondence.

Feb. 17. All these letters were intercepted in England. Elizabeth, alarmed at the danger which threatened her own kingdom, sent them immediately to the king, and, reproaching him with his former lenity towards the Popish party, called upon him to check this formidable conspiracy by The king's a proper severity. But James, though firmly

The king's maxims with regard to popery.

The king's a proper severity. But James, though firmly attached to the Protestant religion, though profoundly versed in the theological contro-

u He was the son of John Prior of Coldingham, one of James's natural children.

versies between the reformers and the church of Rome, though he had employed himself, at that early period of life, in writing a commentary on the Revelations, in which he laboured to prove the pope to be antichrist, had nevertheless adopted already, those maxims concerning the treatment of the Roman Catholics, to which he adhered through the rest of his life. The Roman Catholics were at that time, a powerful and active party in England; they were far from being an inconsiderable faction in his own kingdom. The pope and the king of Spain were ready to take part in all their machinations, and to second every effort of their bigotry. The opposition of such a body to his succession to the crown of England, added to the averseness of the English from the government of strangers, might create him many difficulties. In order to avoid these, he thought it necessary to sooth, rather than to irritate the Roman Catholics, and to reconcile them to his succession, by the hopes of gentler treatment, and some mitigation of the rigour of those laws. which were now in force against them. This attempt to gain one party, by promises of indulgence and acts of clemency, while he adhered with all the obstinacy of a disputant, to the doctrines and tenets of the other, has given an air of mystery, and even of contradiction, to this part of the king's character. The Papists, with the credulity of a sect struggling to obtain power, believed his heart to be wholly theirs; and the Protestants, with the jealousy, inseparable from those who are already in possession of power, viewed every act of lenity as a mark of indifference, or a symptom of apostacy. In order to please both, James often aimed at an excessive refinement, mingled with dissimulation, in which he imagined the perfection of government and of king-craft to consist.

His behaviour on this occasion, was agreesive lenity to the conspirators. His behaviour on this occasion, was agreeable to these general maxims. Notwithstanding the solicitations of the queen of England, enforced by the zealous remon-

strances of his own clergy, a short imprisonment was the only punishment he inflicted upon Huntly and his associates. But he soon had reason to repent an act of clemency so inconsistent with the dignity of government. The first use which the conspirators made of their liberty was, to assemble their followers, and under pretence of removing chancellor Maitland. an able minister, but warmly devoted to the English interest, from the king's council and presence, they attempted to seize James himself. This attempt being defeated, partly by Maitland's vigilance and partly by their own ill-conduct, they were forced to retire to the north, where they openly erected the standard of rebellion. But as the king's government was not generally unpopular, or his ministers odious, their own vassals joined them slowly, and discovered no zeal in the cause. The king, in person, advancing against them with such forces as he could suddenly levy, they durst not rely so much on the fidelity of the troops, which, though superior in number, followed them with reluctance, as to hazard a battle; but suffering them to disperse, they surrendered to the king, and threw themselves on his mercy. Huntly, Errol, Crawford, and Bothwell, were all brought to a public trial. Repeated acts of treason were easily proved against them. The king, however, did not permit any sentence to be pronounced; and after keeping them a few months in confinement, he took occasion, amidst the public festivity and rejoicings at the approach of his marriage, to set them at liberty."

The king's marriage with Anne of Den-mark.

As James was the only descendant of the ancient monarchs of Scotland in the direct line; as all hopes of uniting the crowns of the two kingdoms would have expired with him; as the earl of Arran, the presumptive heir to the throne, was lunatic; the king's

marriage was, on all these accounts, an event which the nation wished for with the utmost ardour. He himself was no less desirous of accomplishing it; and

x Spotsw. 373. Cald. iv. 103-130.

had made overtures for that purpose, to the eldest daughter of Frederick II. king of Denmark. But Elizabeth, jealous of every thing that would render the accession of the house of Stewart more acceptable to the English, endeavoured to perplex James, in the same manner she had done Mary; and employed as many artifices to defeat or to retard his marriage. His ministers, gained by bribes and promises, seconded her intention; and though several different ambassadors were sent from Scotland to Denmark, they produced powers so limited, or insisted on conditions so extravagant, that Frederick could not believe the king to be in earnest; and suspecting that there was some design to deceive or amuse him, gave his daughter in marriage to the duke of Brunswick. Not discouraged by this disappointment, which he imputed entirely to the conduct of his own ministers, James made addresses to the princess Anne, Frederick's second daughter. Though Elizabeth endeavoured to divert him from this by recommending Catherine, the king of Navarre's sister, as a more advantageous match; though she prevailed on the privy-council of Scotland to declare against the alliance with Denmark, he persisted in his choice; and despairing of overcoming the obstinacy of his own ministers in any other manner, he secretly encouraged the citizens of Edinburgh to take arms. They threatened to tear in pieces the chancellor, whom they accused as the person, whose artifices had hitherto disappointed the wishes of the king and the expectations of his people. In consequence of this, the earl Marischal was sent into Denmark at the head of a splendid embassy. He received ample powers and instructions, drawn with the king's own hand. The marriage articles were quickly agreed upon, and the young queen set sail towards Scotland. James made great preparations for her reception, and waited her landing with all the impatience of a lover, when the unwelcome account arrived, that a violent tempest had arisen, which drove back her fleet to Norway, in a condition so shattered, that there was little hope of its putting again to sea, before the spring. This unexpected disappeintment he felt with the utmost sensibility. He instantly fitted out some ships, and, without communicating his intention to any of his council, sailed in person, attended by the chancellor, Oct. 22. several noblemen, and a train of three hundred persons, in quest of his bride. He arrived safely in a small harbour near Upslo, where the queen then resided. There the marriage was so-Nov. 24. lemnized; and as it would have been rash to trust those boisterous seas in the winter season, James accepted the invitation of the court of Denmark, and repairing to Copenhagen, passed several months there, amidst continual feasting and amusements, in which both the queen and himself had great delight.y

No event in the king's life, appears to be a wider deviation from his general character, than this sudden sally. His son Charles I. was capable of that excessive admiration of the other sex, which arises from great sensibility of heart, heightened by elegance of taste: and the romantic air of his journey to Spain, suited such a disposition. But James was not susceptible of any refined gallantry, and always expressed that contempt for the female character, which a pedantic erudition, unacquainted with politeness, is apt to inspire. He was exasperated, however, and rendered impatient by the many obstacles which had been laid in his way. He was anxious to secure the political advantages which he expected from marriage; and fearing that a delay might afford Elizabeth and his own ministers, an opportunity of thwarting him by new intrigues, he suddenly took the resolution of preventing them, by a voyage from which he expected to return in a few weeks. The nation seemed to applaud his conduct, and to be pleased with this appearance of

y Melvil, 352. Spotsw. 377. Murdin. 637.

amorous ardow in a young prince. Notwithstanding his absence so long beyond the time he expected, the nobles, the clergy, and the people, vied with one another in loyalty and obedience; and no period of the king's reign was more remarkable for tranquillity, or more free from any eruption of those factions which so often disturbed the kingdom.

## THE

## HISTORY OF SCOTLAND.

## BOOK VIII.

1590. The king and queen arrive in Scotland. On the first of May, the king and queen arrived at Leith, and were received by their subjects with every possible expression of joy. The solemnity of the queen's coronation was conducted with great magnificence;

but so low had the order of bishops fallen in the opinion of the public, that none of them were present on that occasion; and Mr. Robert Bruce, a Presbyterian minister of great reputation, set the crown on her head, administered the sacred unction, and performed the other customary ceremonies.

The zeal and success, with which many of the clergy had contributed towards preserving peace and order in the kingdom, during his absence, reconciled James, in a great degree, to their persons, and even to the

August 4. presbyterian form of government. In presence of an assembly which met this year, he made high encomiums on the discipline, as well as the doctrine of the church, promised to adhere inviolably to both, and permitted the assembly to frame such acts as gradually abolished all the remains of episcopal jurisdiction, and paved the way for a full and legal establishment of the presbyterian model.<sup>2</sup>

An event happened soon after, which afforded the clergy no small triumph. Archbishop

Adamson, their ancient opponent, having fallen under the king's displeasure, having been deprived of the revenues of his see, in consequence of the act of annexation, and being oppressed with age, with poverty, and diseases, made the meanest submission to the clergy, and delivered to the assembly, a formal recantation of all his opinions concerning church government, which had been matter of offence to the Presbyterians. Such a confession, from the most learned person of the episcopal order, was considered as a testimony which the force of truth had extorted from an enemy.

Meanwhile, the king's excessive clemency Disorders towards offenders multiplied crimes of all in the kinds, and encouraged such acts of viokingdom. lence, as brought his government under contempt, and proved fatal to many of his subjects. The history of several years, about this time, is filled with the accounts of deadly quarrels between the great families, and of murders and assassinations, perpetrated in the most audacious manner, and with circumstances of the utmost barbarity. All the defects in the feudal aristocracy, were now felt more sensibly, perhaps, than at any other period in the history of Scotland, and universal licence and anarchy, prevailed to a degree scarce consistent with the preservation of society: while the king, too gentle to punish, or too feeble to act with vigour, suffered all these enormities to pass with impunity.

An attempt of Bothwell's against the king.

But though James connived at real crimes, witchcraft, which is commonly an imaginary one, engrossed his attention, and those suspected of it felt the whole weight of his aucthority. Many persons, neither extremely old, nor wretchedly poor, which were usually held to be certain indications of this crime, but masters of families, and matrons of a decent rank, and in the middle age of life, were seized and tortured. Though their confessions contained the most absurd and incredible

b Spotsw. 385. Cald. Iv. 214.

circumstances, the king's prejudices, these of the clergy and of the people, conspired in believing their extravagancies without hesitation, and in punishing their persons without mercy. Some of these unhappy sufferers accused Bothwell of having consulted them, in order to know the time of the king's death, and of having employed their art to raise the storms which had endangered the queen's life, and had detained James so long in Denmark. Upon this evidence, that nobleman was committed to prison. His turbulent and haughty spirit, could neither submit to the restraint, nor brook such an indignity. Having gained his keepers, he made his escape, and imputing the accusation to the artifices of his enemy the chancellor, he assembled his followers, under pretence of driving him from the king's councils. Being favoured by some of the king's attendants, he was admitted by a secret passage, under cloud of night, into the court of the palace of Holyrood-house. He advanced directly towards the royal apartment, but happily before he entered, the alarm was taken, and the doors shut. While he Dec. 27. attempted to burst open some of them, and set fire to others, the citizens of Edinburgh had time to run to their arms, and he escaped with the utmost difficulty; owing his safety to the darkness of the night, and the precipitancy with which he fled.°

He retired towards the north, and the king having unadvisedly given a commission to the earl of Huntly, to pursue him and his followers with fire and sword, he, under colour of executing that commission, gratified his private revenge, and surrounded the house of the earl of Murray, burnt it to the ground, and slew Murray himself. The murder of a

Feb. 8. and slew Murray himself. The murder of a young nobleman of such promising virtues, and the heir of the regent Murray, the darling of the people, excited universal indignation. The citizens of Edinburgh rose in a tumultuous manner; and, though they were restrained by the care of the magistrates,

from any act of violence, they threw aside all respect for the king and his ministers, and openly insulted and threatened both. While this mutinous spirit continued, James thought it prudent to withdraw from the city, and fixed his residence for some time at Glasgow. There Huntly surrendered himself to justice; and, notwithstanding the atrociousness of his crime, and the clamours of the people, the power of the chancellor, with whom he was now closely confederated, and the king's regard for the meniory of the duke of Lennox, whose daughter he had married, not only protected him from the sentence, which such an odious action merited, but exempted him even from the formality of a public trial.<sup>d</sup>

A step of much importance was taken Presbysoon after, with regard to the government of terian the church. The clergy had long comchurch goplained of the encroachments made upon vernment established their privileges and jurisdiction, by the acts by law. of the parliament, one thousand five hundred and eighty-four, and though these laws had now lost much of their force, they resolved to petition the parliament, which was approaching, to repeal them in The juncture for pushing such a measure was well chosen. The king had lost much of the public favour by his lenity towards the Popish faction, and still more, by his remissness in pursuing the murderers of the earl of Murray. The chancellor had not only a powerful party of the courtiers combined against him, but was become odious to the people, who imputed to him every false step in the king's conduct. Bothwell still lurked in the kingdom, and being secretly supported by all the enemies of Maitland's administration, was ready every moment to renew his audacious enterprises. James, for all these reasons, was extremely willing to indulge the clergy in their request, and not only consented to a law, whereby the acts of one thousand five hundred and eighty-four

were rescinded or explained, but he carried his complaisance still farther, and permitted the parliament to establish the presbyterian government, in its general assemblies, provincial synods, presbyteries, and kirk sessions, with all the different branches of their discipline and jurisdiction, in the most ample manner. All the zeal and authority of the clergy, even under the administration of regents, from whom they might have expected the most partial favour, could not obtain the sanction of law, in confirmation of their mode of ecclesiastical government. No prince was ever less disposed than James to approve a system, the republican genius of which inspired a passion for liberty, extremely repugnant to his exalted notions of royal prerogative. Nor could any aversion be more inveterate than his, to the austere and uncomplying character of the presbyterian clergy in that age; who, more eminent for zeal than for policy, often contradicted his opinions, and censured his conduct, with a freedom equally offensive to his dogmatism as a theologian, and to his pride as a king. His situation, however, obliged him frequently to conceal, or to dissemble, his sentiments; and, as he often disgusted his subjects, by indulging the Popish faction more than they approved, he endeavoured to atone for this, by concessions to the Presbyterian clergy, more liberal than he himself would otherwise have chosen to grant.e

In this parliament, Bothwell and all his adherents were attainted. But he soon made a new attempt to seize the king at Falkland; and James, betrayed by some of his courtiers, and feebly defended by others, who wished well to Bothwell, as the chancellor's avowed enemy, owed his safety to the fidelity and vigilance of Sir Robert Melvil, and to the irresolution of

Bothwell's associates,f

A new conspiracy of a new and more formidable conspiracy.

<sup>&</sup>lt;sup>c</sup> Cald. iv. 248. 252. Spotsw. 388.

George Ker, the lord Newbattle's brother. the Popish being seized as he was ready to set sail for Spain, many suspicious papers were found in his custody, and among these, several blanks signed by the earls of Angus, Huntly, and Errol. By this extraordinary precaution, they hoped to escape any danger of discovery. But Ker's resolution shrinking when torture was threatened, he confessed that he was employed by these noblemen to carry on a negotiation with the king of Spain; that the blanks subscribed with their names were to be filled up by Crichton and Tyrie; that they were instructed to offer the faithful service of the three earls to that monarch; and to solicit him to land a body of his troops, either in Galloway, or at the mouth of the Clyde, with which they undertook, in the first place, to establish the Roman Catholic religion in Scotland, and then to invade England with the whole forces of the kingdom. David Graham of Fintry, and Barclay of Ladyland, whom he accused of being privy to the conspiracy, were taken into custody, and confirmed all the circumstances of his confession.

The nation having been kept for some time 1593. in continual terror and agitation by so many Zeal of the successive conspiracies, the discovery of people, this new danger completed the panic. All ranks of men, as if the enemy had already been at their gates, thought themselves called upon to stand forth in defence of their country. The ministers of Edinburgh, without waiting for any warrant from the king, who happened at that time to be absent from the capital, and without having received any legal commission, assembled a considerable number of peers and barons, in order to provide an instant security against the impending danger. They seized the earl of Angus, and committed him to the castle; they examined Ker; and prepared a remonstrance to be laid before the king, concerning the state of the nation, and the necessity of prosecuting

and proceedings of the king against them. the conspirators with becoming vigour. James, though jealous of every encroachment on his prerogative, and offended with his subjects, who, instead of petitioning, seemed to prescribe to him, found it necessary, during the violence of the ferment, not

only to adopt their plan, but even to declare, that no consideration should ever induce him to pardon such as had been guilty of so odious a treason. moned the earls of Huntly and Errol to surrender themselves to justice. Graham of Fintry, whom his peers pronounced to be guilty of treason, he Jan. 8. commanded to be publicly beheaded; and marching into the north at the head of an army, the two earls, together with Angus, who had escaped out of prison, retired to the mountains. He placed garrisons in the castles which belonged to them; compelled their vassals, and the barons in the adjacent countries, to subscribe a bond containing professions of their loyalty towards him, and of their firm adherence to the Protestant faith; and the better to secure the tranquillity of that part of the kingdom, constituted the earls of Athol and Marischal his lieutenants there.h

March 18. Elizabeth solicits him to treat them with rigour.

Having finished this expedition, James returned to Edinburgh, where he found lord Borrough, an extraordinary ambassador from the court of England. Elizabeth, alarmed at the discovery of a conspiracy which she considered as no less formidable to her own

kingdom than to Scotland, reproached James with his former remissness, and urged him, as he regarded the preservation of the Protestant religion, or the dignity of his own crown, to punish this repeated treason with rigour; and if he could not apprehend the persons, at least to confiscate the estates of such audacious rebels. She weakened, however, the force of these requests, by interceding at the same time in behalf of Bothwell.

81 whom, according to her usual policy, in nourishing a factious spirit among the Scottish nobles, she had taken under her protection. James absolutely refused to listen to any intercession in favour of one who had so often, and with so much outrage, insulted both his government and his person. With regard to the Popish conspirators, he declared his resolution to prosecute them with vigour; but that he might be the better able to do so, he demanded a small sum of money from Elizabeth, which she, distrustful perhaps of the manner in which he might apply it, shewed no inclination to grant. The zeal, however, and importunity of his own subjects, obliged him to call a parliament, in order to pass an act of attainder against the three earls. But before it met, Ker made his escape out of prison, and, on pretence that legal evidence of their guilt could not be produced, nothing was concluded against them. The king himself was universally suspected of having contrived this artifice, on purpose to elude the requests of the queen of England, and to disappoint the wishes of his own people; and, therefore, in order to sooth the clergy, who exclaimed loudly against his conduct. he gave way to the passing of an act, which ordained such as obstinately contemned the censures of the

Bothwell surprises the king.

church to be declared outlaws.

While the terror excited by the Popish conspiracy possessed the nation, the court had been divided by two rival factions, which contended for the chief direction of affairs.

At the head of one was the chancellor, in whom the king reposed entire confidence. For that very reason, perhaps, he had fallen early under the queen's displea-The duke of Lennox, the earl of Athol, lord Ochiltree, and all the name of Stewart, espoused her quarrel, and widened the breach. James, fond no less of domestic tranquillity than of public peace, advised his favourite to retire, for some time, in hopes that the queen's resentment would subside. But as he stood in

<sup>&</sup>lt;sup>1</sup> Cald. iv. 343. Spotsw. 393. Parl. 13 Jac. VI. c. 164.

need, in the present juncture, of the assistance of an able minister, he had recalled him to court. In order to prevent him from recovering his former power, the Stewarts had recourse to an expedient no July 24. less illegal than desperate. Having combined with Bothwell, who was of the same name, they brought him back secretly into Scotland; and seizing the gates of the palace, introduced him into the royal apartment with a numerous train of armed followers. James, though deserted by all his courtiers, and incapable of resistance, discovered more indignation than fear, and reproaching them for their treachery, called on the earl to finish his treasons, by piercing his sovereign to the heart. But Bothwell fell on his knees, and implored pardon. The king was not in a condition to refuse his demands. A few days after he signed a capitulation with this successful traitor, to whom he was really a prisoner, whereby he bound himself to grant him a remission for all past offences, and to procure the ratification of it in parliament; and in the mean time to dismiss the chancellor, the master of Glamis, lord Home, and Sir George Home, from his councils and presence. Bothwell, on his part, consented to remove from court, though he left there as many of his associates as he thought sufficient to prevent the return of the adverse faction.

But it was now no easy matter to keep He recothe king under the same kind of bondage to vers his liwhich he had been often subject during his berty. minority. He discovered so much impatience Sept. 7. to shake off his fetters, that those who had imposed, durst not continue the restraint. mitted him to call a convention of the nobles at Stirling. and to repair thither himself. All Bothwell's enemies. and all who were desirous of gaining the king's favour by appearing to be so, obeyed the summons. pronounced the insult offered to the king's person and authority to be high treason, and declared him absolved from any obligation to observe conditions extorted by

force, and which violated so essentially his royal prerogative. James, however, still proffered him a pardon, provided he would sue for it as an act of mercy, and promise to retire out of the kingdom. These conditions Bothwell rejected with disdain, and betaking himself once more to arms, attempted to surprise the king; but finding him on his guard, fled to the borders.

Suspected of favouring the Popish lords. The king's ardour against Bothwell, compared with his slow and evasive proceedings against the Popish lords, occasioned a general disgust among his subjects; and was imputed either to an excessive attachment

to the persons of those conspirators, or to a secret partiality towards their opinions; both which gave rise to no unreasonable fears. The clergy, as the immediate guardians of the Protestant religion, thought themselves bound, in such a juncture, to take extraordinary steps for its preservation. The provincial synod of Fife happening to meet at that time, a motion was made to excommunicate all concerned in the late conspiracy, as obstinate and irreclaimable Papists; and though none of the conspirators resided

a motion was made to excommunicate all concerned in the late conspiracy, as obstinate and irreclaimable Papists; and though none of the conspirators resided within the bounds of the synod, or were subject to its jurisdiction, such was the zeal of the members, that, overlooking this irregularity, they pronounced against them the sentence of excommunication, to which the act of last parliament added new terrors. Lest this should be imputed to a few men, and accounted the act of a small part of the church, deputies were appointed to attend the adjacent synods, and to desire their approbation and concurrence.

His lenity towards them.
Oct. 17.

An event happened a few weeks after,—which increased the people's suspicions of the king. As he was marching on an expedition against the borderers, the three Popish earls coming suddenly into his presence,

offered to submit themselves to a legal trial; and James, without committing them to custody, appointed a day

midable train of their friends and vassals. But in the mean time the clergy, together with many peers and barons, assembled at Edinburgh, remonstrated against the king's extreme indulgence with great boldness, and demanded of him, according to the regular course of justice, to commit to sure custody persons charged with the highest acts of treason, who could not be brought to a legal trial, until they were absolved from the censures of the church; and to call a convention of estates. to deliberate concerning the method of proceeding against them. At the same time they offered to accompany him in arms to the place of trial, lest such audacious and powerful criminals should overawe justice, and dictate to the judges, to whom they pretended James, though extremely offended, both with the irregularity of their proceedings, and the presumption of their demands, found it expedient to put off the day of trial, and to call a convention of estates, in order to quiet the fears and jealousies of the people. By being humoured in this point, their suspicions began gradually to abate, and the chancellor managed the convention so artfully, that he himself, together with a few other members, were empowered to pronounce a final sentence upon the conspirators. After much deliberation they ordained, that the three earls Nov. 26. and their associates should be exempted from all farther inquiry or prosecution, on account of their correspondence with Spain; that, before the 1st day of February, they should either submit to the church, and publicly renounce the errors of Popery, or remove out of the kingdom; that, before the 1st of January. they should declare which of these alternatives they would embrace; that they should find surety for their peaceable demeanour for the future; and that if they failed to signify their choice in due time, they should lose the benefit of this act of abolition, and remain exposed to all the pains of law.1

<sup>1</sup> Cald. iv. 330. Spotsw. 397.

By this lenity towards the conspirators, James incurred much reproach, and gained no advantage. Devoted to the Popish superstition, submissive to all the dictates of their priests, and buoyed up with hopes and promises of foreign aid, the three earls refused to accept of the conditions, and continued their 1594. treasonable correspondence with the court Jan. 18. of Spain. A convention of estates pronounced them to have forfeited the benefit of the articles which were offered; and the king required them. by proclamation, to surrender themselves to justice. The presence of the English ambassador contributed. perhaps, to the vigour of these proceedings. Elizabeth, ever attentive to James's motions, and imputing his reluctance to punish the Popish lords to a secret approbation of their designs, had sent lord Zouche to represent, once more, the danger to which he exposed himself, by this false moderation; and to require him to exercise that rigour which their crimes, as well as the posture of affairs, rendered necessary. the steps now taken by the king silenced all complaints on that head, yet Zouche, forgetful of his character as an ambassador, entered into private negotiations with such of the Scottish nobles as disapproved of the king's measures, and held almost an open correspondence with Bothwell, who, according to the usual artifice of malcontents, pretended much solicitude for reforming the disorders of the commonwealth; and covered his own ambition with the specious veil of zeal against those counsellors who restrained the king from pursuing the avowed enemies of the Protestant faith. Zouche encouraged him, in the name of his mistress, to take arms against his sovereign.

A new attempt of filled with mutual distrust of each other. They were jealous, perhaps, to excess, that James's affections leaned too much towards the Popish faction; he suspected them, without good reason, of prompting Bothwell to rebellion, and even

of supplying him with money for that purpose. instigation, indeed, was wanting to rouse such a turbulent spirit as Bothwell's to any daring enterprise. He appeared suddenly within a mile of Edinburgh, at the head of four hundred horse. The pretences, by which he endeavoured to justify this insurrection, were extremely popular; zeal for religion, enmity to Popery, concern for the king's nonour, and for the liberties of James was totally unprovided for his own defence; he had no infantry, and was accompanied only with a few horsemen of lord Home's train. this extremity, he implored the aid of the citizens of Edinburgh, and, in order to encourage them to act with zeal, he promised to proceed against the Popish lords with the utmost rigour of law. Animated by their ministers, the citizens ran cheerfully to their arms, and advanced, with the king at their head, against Bothwell; but he, notwithstanding his success in putting to flight lord Home, who had rashly charged him with a far inferior number of cavalry, retired to Dalkeith without daring to attack the king. His followers abandoned him soon after, and discouraged by so many successive disappointments, could never afterward be brought to venture into the field. He betook himself to his usual lurking-places in the north of England; but Elizabeth, in compliance with the king's remonstrances, obliged him to quit his retreat."

No sooner was the king delivered from fresh dangers from the Popish lords. April 3.

No sooner was the king delivered from one danger, than he was called to attend to another. The Popish lords, in consequence of their negotiations with Spain, received, in the spring, a supply of money from Philip.

What bold designs this might inspire, it was no easy matter to conjecture. From men under the dominion of bigotry, and whom indulgence could not reclaim, the most desperate actions were to be dreaded. The assembly of the church immediately took the alarm; remonstrated against them with more bitterness than

ever; and unanimously ratified the sentence of excommunication pronounced by the synod of Fife. James himself, provoked by their obstinacy and ingratitude, and afraid that this long forbearance would not only be generally displeasing to his own subjects, but give rise to unfavourable suspicions among the English, exerted himself with unusual vigour. He called a June 8. parliament; laid before it all the circumstances and aggravations of the conspiracy; and though there were but few members present, and several of these connected with the conspirators by blood or friendship, he prevailed on them, by his influence and importunity, to pronounce the most rigorous sentence which the law can inflict. They were declared to be guilty of high-treason, and their estates and honours forfeited. At the same time, statutes, more severe than ever, were enacted against the professors of the Popish religion.

How to put this sentence in execution, Battle of was a matter of great difficulty. Three pow-Glenlivat. erful barons cantoned in a part of the country of difficult access, surrounded with numerous vassals, and supported by aid from a foreign prince, were more than an overmatch for a Scottish monarch. entreaty could prevail on Elizabeth to advance the money, necessary for defraying the expenses of an expedition against them. To attack them in person, with his own forces alone, might have exposed James both to disgrace and to danger. He had recourse to the only expedient which remained in such a situation, for aiding the impotence of sovereign authority; he delegated his authority to the earl of Argyll and lord-Forbes, the leaders of two clans at enmity with the conspirators; and gave them a commission to invade their lands, and to seize the castles which belonged to them. Bothwell, notwithstanding all his high pretensions of zeal for the Protestant religion, having new entered into a close confederacy with them, the danger became every day more urging. Argyll, solicited

by the king, and roused by the clergy, took the field at the head of seven thousand men. Huntly and Errol met him at Glenlivat, with an army far inferior in number, but composed chiefly of gentlemen of the low countries, mounted on horseback, and who brought along with them a train of field-pieces. They Oct. 3. encountered each other with all the fury which hereditary enmity and ancient rivalship add to undisciplined courage. But the Highlanders, dis-1595. concerted by the first discharge of the cannon. to which they were little accustomed, and unable to resist the impression of cavalry, were soon put to flight; and Argyll, a gallant young man of eighteen, was carried by his friends out of the field, weeping with indignation at their disgrace, and calling on them to stand, and to vindicate the honour of their name."

On the first intelligence of this defeat, James, though obliged to pawn his jewels in order to raise money, assembled a small body of troops, and marched towards the north. He was joined by the Irvines, Keiths, Leslys, Forbeses, and other clans at enmity with Huntly and Errol, who having lost several of their principal followers at Glenlivat, and others refusing to bear arms against the king in person, were obliged to retire to the mountains. James wasted their lands; put garrisons in some of their castles; burnt others; and left the duke of Lennox as his lieutenant in that part of kingdom, with a body of men sufficient to restrain them from gathering to any head there, or from infesting the low country. Reduced at last to extreme distress by

the rigour of the season, and the desertion of their followers, they obtained the king's permission to go beyond seas, and gave security that they should neither return without his licence, nor engage in any new intrigues against the Protestant religion, or the peace

of the kingdom.p

n Cald. iv. 408. o Birch. Mem. i. 186. p Spotsw. 404. Cald. 373, &c.

By their exile, tranquillity was re-established in the north of Scotland; and the firmness and vigour which James had displayed in his last proceedings against them, regained him, in a great degree, the confidence of his Protestant subjects. But he sunk in the same

The Roman Catholics incensed against James.

proportion, and for the same reason, in the esteem of the Roman Catholics. They had asserted his mother's right to the crown of England with so much warmth, that they could not, with any decency, reject his; and the indulgence, with which he affected

to treat the professors of the Popish religion, inspired them with such hopes, that they viewed his accession to the throne as no undesirable event. But the rigour with which the king had lately pursued the conspirators, and the severe statutes against Popery to which he had given his consent, convinced them now that these hopes were visionary; and they began to look about in quest of some new successor, whose rights they might oppose to his. The Papists who resided in England turned their eyes towards the earl of Essex, whose generous mind, though firmly established in the Protestant faith, abhorred the severities inflicted in that age on account of religious opinions. Those of the same sect, who were in exile, formed a bolder scheme, and one more suitable to their situation. They advanced the claim of the infanta of Spain; and Parsons the Jesuit published a book, in which, by false quotations from history, by fabulous genealogies, and absurd arguments, intermingled with bitter invectives against the king of Scots, he endeavoured to prove the infanta's title to the English crown to be preferable to his. Philip, though involved already in a war both with France and England, and scarce able to defend the remains of the Burgundian provinces against the Dutch commonwealth, eagerly grasped at this airy project. The dread of a Spanish pretender to the crown, and the opposition which the Papists began to form against the king's succession, contributed not a

little to remove the prejudices of the Frotestants, and to prepare the way for that event.

Bothwell forced to fly into Spain.

Bothwell, whose name has been so often mentioned as the disturber of the king's tranquillity, and of the peace of the kingdom, was now in a wretched condition.

Abandoned by the queen of England, on account of his confederacy with the Popish lords; excommunicated by the church for the same reason; and deserted, in his distress, by his own followers; he was obliged to fly for safety to France, and thence to Spain and Italy, where, after renouncing the Protestant faith, he led many years an obscure and indigent life, remarkable only for a low and infamous debauchery. The king, though extremely ready to sacrifice the strongest resentment to the slightest acknowledgments, could never be softened by his submission, nor be induced to listen to any intercession in his behalf.<sup>4</sup>

This year the king lost chancellor Maitland, an able minister, on whom he had long devolved the whole weight of public affairs. As James loved him while alive, he wrote in honour of his memory, a copy of verses, which, when compared with the compositions

of that age, are far from being inelegant."

A change in the administration. Soon after his death, a considerable change was made in the administration. At that time, the annual charges of government far exceeded the king's revenues. The queen was fond of expensive amuse-

ments. James himself was a stranger to economy. It became necessary, for all these reasons, to levy the public revenues with greater order and rigour, and to husband them with more care. This important trust was committed to eight gentlemen of the law, who,

q Winw. Mem. i. Spotsw. 410.

s Alexander Seaton president of the session, Walter Stewart commendator of Blantyre, lord privy-seal, David Carnegy, John Lindsay, James Elphingstone, Thomas Hamilton, John Skene clerk register, and Peter Young elemosynar.

from their number, were called Octavians. The powers vested in them were ample, and almost unlimited. The king bound himself neither to add to their number, nor to supply any vacancy that might happen, without their consent: and, knowing the facility of his own temper, agreed that no alienation of his revenue, no grant of a pension, or order on the treasury, should be held valid, unless it were ratified by the subscription of five of the commissioners; all their acts and decisions were declared to be of equal force with the sentence of judges in civil courts; and in consequence of them, and without any other warrant, any person might be arrested, or their goods seized. Such extensive jurisdiction, together with the absolute disposal of the public money, drew the whole executive part of government into their hands. United among themselves, they gradually undermined the rest of the king's ministers, and seized on every lucrative or honourable office. The ancient servants of the crown repined at being obliged to quit their stations to new men. The favourites and young courtiers murmured at seeing the king's liberality stinted by their prescriptions. And the clergy exclaimed against some of them as known apostates to Popery, and suspected others of secretly favouring it. They retained their power, however, notwithstanding this general combination against them; and they owed it entirely to the order and economy which they introduced into the administration of the finances, by which the necessary expenses of government were more easily defraved than in any other period of the king's reign.t

The rumour of vast preparations which Violence of the nation against the Popish lords.

The rumour of vast preparations which Philip was said to be carrying on at this time, filled both England and Scotland with the dread of a new invasion. James took proper measures for the defence of his kingdom. But these did not satisfy the zeal of the clergy, whose suspicions of the king's sincerity

began to revive; and as he had permitted the wives of the banished peers to levy the rents of their estates, and to live in their houses, they charged him with rendering the act of forfeiture ineffectual, by supporting the avowed enemies of the Protestant faith. The assembly of the church took under consideration the state of the kingdom, and having appointed a day of public fasting, they solemnly renewed the covenant by which the nation was bound to adhere to the Protestant faith, and to defend it against all aggres-A committee, consisting of the most eminent clergymen, and of many barons and gentlemen of distinction, waited on the king, and laid before him a plan for the security of his kingdom, and the preservation of religion. They urged him to appropriate the estates of the banished lords as a fund for the maintenance of soldiers; to take the strictest precautions for preventing the return of such turbulent subjects into the country; and to pursue all who were suspected of being their adherents with the utmost rigour.

Nothing could be more repugnant to the king's schemes, or more disagreeable to his remissness with regard to them.

Nothing could be more repugnant to the king's schemes, or more disagreeable to his inclination, than these propositions. Averse, through his whole life, to any course where

he expected opposition or danger; and fond of attaining his ends with the character of moderation, and by the arts of policy, he observed with concern the prejudices against him which were growing among the Roman Catholics, and resolved to make some atonement for that part of his conduct which had drawn upon him their indignation. Elizabeth was now well advanced in years; her life had lately been in danger; if any Popish competitor should arise to dispute his right of succession, a faction so powerful as that of the banished lords might be extremely formidable; and any division among his own subjects might prove fatal at a juncture which would require their united and most vigorous efforts. Instead, therefore, of the additional severities which the assembly

proposed, James had thoughts of mitigating the punishment which they already suffered. And as they were surrounded, during their residence in foreign parts, by Philip's emissaries; as resentment might dispose them to listen more favourably than ever to their suggestions; as despair might drive them to still more atrocious actions; he resolved to recall them, under certain conditions, into their native country. Encouraged by these sentiments of the king in their favour, of which they did not want intelligence, and wearied already of the dependant and anxious life of exiles, they ventured to return secretly into Scotland. Soon after, they presented a petition to the king, begging his permission to reside at their own houses, and offering to give security for their peaceable and dutiful behaviour. James called a convention of estates to deliberate on a matter of such importance, and by their advice he granted the petition.

The rash proceedings of the clergy and people.

The members of a committee appointed by the last general assembly, as soon as they were informed of this, met at Edinburgh, and with all the precipitancy of fear and of zeal, took such resolutions as they thought necessary for the safety of the

kingdom. They wrote circular letters to all the presbyteries in Scotland; they warned them of the approaching danger; they exhorted them to stir up their people to the defence of their just rights; they commanded them to publish, in all their pulpits, the act excommunicating the Popish lords; and enjoined them to lay all those who were suspected of favouring Popery under the same censure by a summary sentence, and without observing the usual formalities of trial. As the danger seemed too pressing to wait for the stated meetings of the judicatories of the church, they made choice of the most eminent clergymen in different corners of the kingdom, appointed them to reside constantly at Edinburgh, and to meet every day with the ministers of that city, under the name of the

Standing Council of the Church, and vested in this body the supreme authority, by enjoining it, in imitation of the ancient Roman form, to take care that the church should receive no detriment.

These proceedings, no less unconstitutional than unprecedented, were manifest encroachments on the royal prerogative, and bold steps towards open rebellion. The king's conduct, however, justified in some degree such excesses. His lenity towards the Papists,

lion. The king's conduct, however, justified in some degree such excesses. His lenity towards the Papists, so repugnant to the principles of that age; his pardoning the conspirators, notwithstanding repeated promises to the contrary; the respect he paid to lady Huntly, who was attached to the Romish religion no less than her husband; his committing the care of his daughter, the princess Elizabeth, to lady Livingston, who was infected with the same superstition; the contempt with which he talked on all occasions, both of the character of ministers, and of their function, were circumstances which might have filled minds, not prone by nature to jealousy, with some suspicions; and might have precipitated into rash counsels those who were far removed from intemperate zeal. But, however powerful the motives might be which influenced the clergy, or however laudable the end they had in view, they conducted their measures with no address, and even with little prudence. James discovered a strong inclination to avoid a rupture with the church, and, jealous as he was of his prerogative, would willingly have made many concessions for the sake of peace. By his command, some of the privy-counsellors had an interview with the more moderate among the clergy, and inquired whether Huntly and his associates might not, upon making proper acknowledgments, be again received into the bosom of the church, and be exempted from any farther punishment on account of their past apostacy and treasons. They replied, that though the gate of mercy stood always open for those who repented and returned, yet as these noblemen had been guilty of idolatry, a crime deserving death both by the

law of God and of man, the civil magistrate could not legally grant them a pardon; and even though the church should absolve them, it was his duty to inflict punishment upon them. This inflexibility in those who were reckoned the most compliant of the order, filled the king with indignation, which the imprudence and obstinacy of a private clergyman heightened into rage.

Seditious doctrine taught by Black. Mr. David Black, minister of St. Andrew's, discoursing in one of his sermons, according to custom, concerning the state of the nation, affirmed that the king had permitted the Popish lords to return into

Scotland, and by that action had discovered the treachery of his own heart; that all kings were the devil's children; that Satan had now the guidance of the court; that the queen of England was an atheist; that the judges were miscreants and bribers; the nobility godless and degenerate; the privy-counsellors cormorants and men of no religion; and in his prayer for the queen he used these words, "We must pray for her for fashion-sake, but we have no cause; she will

Nov. 10. The clergy espouse his defence. never do us good." James commanded him to be summoned before the privy-council, to answer for such seditious expressions; and the clergy, instead of abandoning him to the punishment which such a petulant and cri-

minal attack on his superiors deserved, were so imprudent as to espouse his cause, as if it had been the common one of the whole order. The controversy concerning the immunities of the pulpit, and the rights of the clergy to testify against vices of every kind, which had been agitated in 1584, was now revived. It was pretended that, with regard to their sacred function, ministers were subject to the church alone; that it belonged only to their ecclesiastical superiors to judge of the truth or falsehood of doctrines delivered in the pulpit; that if, upon any pretence whatever,

the king usurped this jurisdiction, the church would, from that moment, sink under servitude to the civil magistrate; that, instead of reproving vice with that honest boldness which had often been of advantage to individuals, and salutary to the kingdom, the clergy would learn to flatter the passions of the prince, and to connive at the vices of others; that the king's eagerness to punish the indiscretion of a Protestant minister, while he was so ready to pardon the crimes of Popish conspirators, called on them to stand upon their guard, and that now was the time to contend for their privileges, and to prevent any encroachment on those rights, of which the church had been in possession ever since the Reformation. Influenced by these considerations, the council of the church enjoined Black to decline the jurisdiction of the privy-council. Proud of such an opportunity to display his zeal, he presented a paper to that purpose, and with the utmost firmness refused to plead, or to answer the questions which were put to him. In order to add greater weight to these proceedings, the council of the church transmitted the declinature to all the presbyteries throughout the kingdom, and enjoined every minister to subscribe it in testimony of his approbation.

James defended his rights with no less vigour than they were attacked. Sensible of the contempt under which his authority must fall, if the clergy should be permitted publicly, and with impunity, to calumniate his ministers, and even to censure himself; and knowing, by former examples, what unequal reparation for such offences he might expect from the judicatories of the church, he urged on the inquiry into Black's conduct, and issued a proclamation, commanding the members of the council of the church to leave Edinburgh, and to return to their own parishes. Black, instead of submitting, renewed his declinature; and the members of the council, in defiance of the proclamation, declared, that, as they met by the authority of the

church, obedience to it was a duty still more sacred than that which they owed to the king himself. The privy-council, notwithstanding Black's refusing to plead, proceeded in the trial; and, after a solemn inquiry, pronounced him guilty of the crimes of which he had been accused; but referred it to the king to

appoint what punishment he should suffer.

Meanwhile, many endeavours were used to bring matters to accommodation. Almost every day produced some new scheme of reconcilement; but, through the king's fickleness, the obstinacy of the clergy, or the intrigues of the courtiers, they all proved ineffectual. Both parties appealed to the people, and by reciprocal and exaggerated accusations endeavoured to render each other odious. Insolence, sedition, treason, were the crimes with which James charged the clergy; while they made the pulpits resound with complaints of his excessive lenity towards Papists, and of the no less excessive rigour with which he oppressed the established church. Exasperated by their bold invectives, he, at last, sentenced Black to retire beyond the river Spey, and to reside there during his pleasure; and once more commanding the members of the standing council to depart from Edinburgh, he required all the ministers of the kingdom to subscribe a bond, obliging themselves to submit, in the same manner as other subjects, to the jurisdiction of the civil courts in matters of a civil nature.

This decisive measure excited all the vio-Atumult in Edinburgh. Ient passions which possess disappointed factions; and deeds no less violent immediately followed. These must be imputed in part, to the artifices of some courtiers who expected to reap advantage from the calamities of their country, or who hoped to lessen the authority of the Octavians, by engaging them in hostilities with the church. On one hand, they informed the king that the citizens of Edinburgh were under arms every night, and had planted a strong guard round the houses of their ministers. James, in order to

issued a proclamation, commanding twenty-four of the principal citizens to leave the town within six hours. On the other hand, they wrote to the ministers, advising them to look to their own safety, as Huntly had been secretly admitted to an interview with the king, and had been the author of the severe proclamation against the citizens of Edinburgh." They doubted no more of the truth of this intelligence, than the king had done of that which he received, and fell as blindly into the snare. The letter came to their hands just as one of their number was going to mount the pulpit. They resolved that he should acquaint the people of their dan-Dec. 17. ger; and he painted it with all the strong colours which men naturally employ in describing any dreadful and instant calamity. When the sermon was over, he desired the nobles and gentlemen to assemble in the Little Church. The whole multitude, terrified at what they had heard, crowded thither; they promised and vowed to stand by the clergy; they drew up a petition to the king, craving the redress of those grievances, of which the church complained, and beseeching him to deliver them from all future apprehensions of danger, by removing such of his counsellors as were known to be enemies of the Protestant religion. Two peers, two gentlemen, two burgesses, and two ministers, were appointed to present it. The king happened to be in the great hall of the Tolbooth, where The king in danger. the court of session was sitting. The manner in which the petition was delivered, as well as its

the petitioners insisted with warmth; and a promiscuu Though matters were industriously aggravated by persons who wished both parties to pursue violent measures, neither of these reports was altogether destitute of foundation. As their ministers were supposed to be in danger, some of the more zealous citizens had determined to defend them by force of arms. Birch. Mem. ii. 250. Huntly had been privately in Edinburgh, where he had an interview, if not with the king, at least with some of his ministers. Birch. Ibid. 230.

contents, offended him. He gave a haughty reply;

ous multitude pressing into the room, James retired abruptly into another apartment, and commanded the gates to be shut behind him. The deputies returned to the multitude, who were still assembled, and to whom a minister had been reading, in their absence, the story of Haman. When they reported that the king had refused to listen to their petitions, the church was filled in a moment with noise, threatenings, execrations, and all the outrage and confusion of a popular tumult. Some called for their arms, some to bring out the wicked Haman; others cried the sword of the Lord and of Gideen; and rushing out with the most furious impetuosity, surrounded the Tolbooth, threatening the king himself, and demanding some of his counsellors, whom they named, that they might tear them in pieces. The magistrates of the city, partly by authority, partly by force, endeavoured to quell the tumult; the king attempted to sooth the malcontents, by promising to receive their petitions, when presented in a regular manner; the ministers, sensible of their own rashness in kindling such a flame, seconded both; and the rage of the populace subsiding as suddenly as it had arisen, they all dispersed, and the king returned to the palace; happy in having escaped from an insurrection, which, through the instantaneous and unconcerted effect of popular fury, had exposed his life to imminent danger, and was considered by him as an unpardonable affront to his authority.x

As soon as he retired, the leaders of the malcontents assembled, in order to prepare their petition. The punishment of the Popish lords; the removal of those counsellors who were suspected of favouring their persons or opinions; the repeal of all the late acts of council, subversive of the authority of the church; together with an act approving the proceedings of the standing council, were the chief of their demands. But the king's indignation was still so high, that the deputies, chosen for this purpose, durst not venture that night

x Spotsw. 417, &c. Cald. v. 54, &c. Birch. Mem. ii. 235.

He leaves Edinburgh, and proceeds with severity against the citizens. to present requests which could not fail of kindling his rage anew. Before next morn, ing, James, with all his attendants, withdrew to Linlithgow; the session, and other courts of justice, were required to leave a city where it was no longer consistent either with their safety, or their dignity, to remain;

and the noblemen and barons were commanded to return to their own houses, and not to re-assemble without the king's permission. The vigour with which the king acted, struck a damp upon the spirits of his ad-The citizens, sensible how much they would versaries. suffer by his absence, and the removal of the courts of justice, repented already of their conduct. The ministers alone resolved to maintain the contest. They endeavoured to prevent the nobles from dispersing; they inflamed the people by violent invectives against the king; they laboured to procure subscriptions to an association for their mutual defence: and conscious what lustre and power the junction of some of the greater nobles would add to their cause, the ministers of Edinburgh wrote to lord Hamilton, that the people, moved by the word of God, and provoked by the injuries offered to the church, had taken arms; that many of the nobles had determined to protect the Protestant religion, which owed its establishment to the picty and valour of their ancestors; that they wanted only a leader to unite them, and to inspire them with vigour; that his zeal for the good cause, no less than his noble birth, entitled him to that honour: They conjured him, therefore, not to disappoint their hopes and wishes, nor to refuse the suffering church that aid which she so much needed. Lord

that aid which she so much needed. Lord Hamilton, instead of complying with their desire, carried the letter directly to the king, whom this new insult irritated to such a degree, that he commanded the magistrates of Edinburgh instantly to seize their ministers, as manifest incendiaries, and encouragers of rebellion. The magistrates, in order to regain the king's favour,

were preparing to obey; and the ministers, who saw no other hope of safety, fled towards England.

The king humbles the power of the church. Jan. 3.

This unsuccessful insurrection, instead of overturning, established the king's authority. Those concerned in it were confounded and dispersed. The rest of James's subjects, in order to avoid suspicion, or to gain his favour, contended who should be most forward to execute his vengeance. A conven-

tion of estates being called, pronounced the late insurrection to be high treason; ordained every minister to subscribe a declaration of his submission to the king's jurisdiction, in all matters civil and criminal; empowered magistrates to commit, instantly, to prison, any minister, who, in his sermons, should utter any indecent reflections on the king's conduct; prohibited any ecclesiastical judicatory to meet without the king's licence; commanded that no person should be elected a magistrate of Edinburgh, for the future, without the king's approbation; and that, in the mean time, the present magistrates should either discover and inflict condign punishment on the authors of the late tumult, or the city itself should be subjected to all the penalties of that treasonable action.<sup>2</sup>

Abridges the privileges of the citizens of Edmburgh.

Armed with the authority of these decrees, James resolved to crush entirely the mutinous spirit of his subjects. As the clergy had hitherto derived their chief credit and strength from the favour and zeal of the citizens of Edinburgh, his first care

was to humble them. Though the magistrates submitted to him in the most abject terms; though they vindicated themselves, and their fellow-citizens, from the most distant intention of violating his royal person or authority; though, after the strictest scrutiny, no circumstances that could fix on them the suspicion of premeditated rebellion had been discovered; though many of the nobles, and such of the clergy as still re-

tained any degree of favour, interceded in their behalf; neither acknowledgments, nor intercessions, were of the least avail.a The king continued inexor-Feb. 28. able, the city was declared to have forfeited its privileges as a corporation, and to be liable to all the penalties of treason. The capital of the kingdom, deprived of magistrates, deserted by its ministers, abandoned by the courts of justice, and proscribed by the king, remained in desolation and despair. The courtiers even threatened to rase the city to the foundation, and to erect a pillar where it stood, as an everlasting monument of the king's vengeance, and of the guilt of its inhabitants. At last, in compliance with Elizabeth, who interposed in their favour, and moved by the continual solicitations of the nobles, James absolved the citizens from the penalties of law, but at the same time he stripped them of their most important privileges; they were neither allowed to elect their own magistrates nor their own ministers; many new burdens were imposed on them; and a considerable sum of money was exacted by way of peace-offering.b

James was, meanwhile, equally assiduous, New reguand no less successful, in circumscribing lations with the jurisdiction of the church. Experience regard to had discovered that to attempt this, by acts the church. of parliament, and sentences of privy-council, was both ineffectual and odious. He had recourse now to an expedient more artful, and better calculated for obtaining his end. The ecclesiastical judicatories were composed of many members; the majority of the clergy were extremely indigent, and unprovided of legal stipends; the ministers in the neighbourhood of Edinburgh, notwithstanding the party established by the presbyterian government, had assumed a leading in the church, which filled their brethren with envy; every numerous body of men is susceptible of sudden and strong impressions, and liable to be influenced,

corrupted, or overawed. Induced by these considerations, James thought it possible to gain the clergy, whom he had in vain attempted to subdue. Proper agents were set to work all over the kingdom; promises, flattery, and threats were employed; the usurpations of the brethren near the capital were aggravated; the jealousy of their power, which was growing in the distant provinces, was augmented; and two different general assemblies were held, in both which, notwithstanding the zeal and boldness wherewith a few leading clergymen defended the privileges of the church, a majority declared in favour of those measures which were agreeable to the king. Many practices, which had continued since the Reformation, were condemned; many points of discipline, which had hitherto been reckoned sacred and uncontroverted, were given up; the licence with which ministers discoursed of political matters, was restrained; the freedom with which they inveighed against particular persons was censured; sentences of summary excommunication were declared unlawful; the convoking a general assembly, without the king's permission, was prohibited; and the right of nominating ministers to the principal towns, was vested in the crown. Thus, the clergy themselves surrendered privileges, which it would have been dangerous to invade, and voluntarily submitted to a voke more intolerable than any James would have ventured to impose by force: while such as continued to oppose his measures, instead of their former popular topic of the king's violent encroachments on a jurisdiction which did not belong to him, were obliged to turn their outcries against the corruptions of their own order.c

By the authority of these general assemblies, the Popish earls were allowed to make a public recantation of their errors; were absolved from the sentence of excommunication; and received into the bosom of the church.

c Spotsw. 433. Cald. v. 189. 233.

But, not many years after, they relapsed into their former errors, were again reconciled to the church of Rome, and by their apostacy justified, in some degree, the fears and scruples of the clergy with regard to their absolution.

The ministers of Edinburgh owed to the intercession of these assemblies the liberty of returning to their charges in the city. But this liberty was clogged in such a manner as greatly abridged their power. The city was divided into distinct parishes; the number of ministers doubled; persons on whose fidelity the king could rely were fixed in the new parishes; and these circumstances, added to the authority of the late decrees of the church, contributed to confirm that absolute dominion in ecclesiastical affairs, which James possessed during the remainder of his reign.

The king was so intent on new modelling the church, that the other transactions of this period scarce deserve to be remembered. The Octavians, envied by the other courtiers, and splitting into factions among themselves, resigned their commission; and the administration of the revenue returning into its former channel, both the king and the nation were deprived of

the benefit of their regular and frugal economy.

Dec. 19. Towards the end of the year, a parliament was held in order to restore Huntly and his associates to their estates and honours, by repealing the act of forfeiture passed against them. The authority of this supreme court was likewise employed to introduce a farther innovation into the church; but, conformable to the system which the king had now adopted, the motion for this purpose took its rise from

Ecclesiastics restored to a seat in parliament.

the clergy themselves. As the act of general annexation, and that establishing the Presbyterian government, had reduced the few bishops, who still survived, to poverty and contempt; as those who possessed the

abbeys and priories were mere laymen, and many of them temporal peers, few or none of the ecclesiastical order remained to vote in parliament, and by means of that, the influence of the crown was considerably diminished there, and a proper balance to the power and number of the nobles was wanting? But the prejudices which the nation had conceived against the name and character of bishops were so violent, that James was obliged, with the utmost care, to avoid the appearance of a design to revive that order. He prevailed therefore on the commission appointed by the last general assembly to complain to the parliament, that the church was the only body in the kingdom destitute of its representatives in that supreme court, where it so nearly concerned every order to have some, who were bound to defend its rights; and to crave that a competent number of the clergy should be admitted, according to ancient custom, to a seat there. In compliance with this request, an act was passed, by which those ministers, on whom the king should confer the vacant bishoprics and abbeys, were entitled to a vote in parliament; and that the clergy might conceive no jealousy of any encroachment upon their privileges, it was remitted to the general assembly, to determine what spiritual jurisdiction or authority in the government of the church these persons should possess.d

The king, however, found it no easy matter to obtain the concurrence of the ecclesiastical judicatories, in which the act of parliament met with a fierce opposition. Though the clergy perceived how much lustre this new privilege would reflect upon their order; though they were not insensible of the great accession of personal power and dignity, which many of them would acquire, by being admitted into the supreme council of the nation, their abhorrence of episcopacy was extreme; and to that they sacrificed every consideration of interest or ambition. All the king's professions of regard for the present constitution of the church did not convince them of his sincerity; all the devices that could be invented for restraining and cir-

cumscribing the jurisdiction of such as were to be raised to this new honour, did not diminish their jealousy and fear. Their own experience had taught them. with what insiduating progress the hierarchy advances, and though admitted at first with moderate authority. and under specious pretences, how rapidly it extends "Varnish over this scheme," said one its dominion. of the leading clergymen, "with what colours you please; deck the intruder with the utmost art; under all this disguise, I see the horns of his mitre." same sentiments prevailed among many of his brethren, and induced them to reject power and honours, with as much zeal as ever those of their order courted them. Many, however, were allured by the hopes of preferment; the king himself and his ministers employed the same arts, which they had tried so successfully last year; and after long debates, and much opposition, the general assembly declared that it was lawful for ministers to accept of a seat in parlia-March 7. ment; that it would be highly beneficial to the church, to have its representatives in that supreme court; and that fifty-one persons, a number nearly equal to that of the ecclesiastics, who were anciently called to parliament, should be chosen from among the clergy for that purpose. The manner of their election, together with the powers to be vested in them, were left undecided for the present, and furnished matter of future deliberation.

As the prospect of succeeding to the 1599. crown of England drew nearer, James mul-James entiplied precautions in order to render it deavours certain. As he was allied to many of the with success to gain princes of Germany by his marriage, he sent a party in ambassadors extraordinary to their several England. courts, in order to explain the justness of his title to the English throne, and to desire their assistance, if any competitor should arise to dispute his undoubted rights. These princes readily acknowledged

e Spotsw. 450. Cald. v. 278.

the equity of his claim; but the aid which they could afford him was distant and feeble. At the same time. Edward Bruce, abbot of Kinloss, his ambassador at the English court, solicited Elizabeth, with the utmost warmth, to recognize his title by some public deed, and to deliver her own subjects from the calamities which are occasioned by an uncertain or disputed succession. But age had strengthened all the passions which had hitherto induced Elizabeth to keep this great question obscure and undecided; and a general and evasive answer was all that James could obtain. As no impression could be made on the queen, the ambassador, was commanded to sound the disposition of her subjects, and to try what progress he could make in gaining them. Bruce possessed all the talents of secrecy, judgment, and address, requisite for conducting a negotiation no less delicate than important. A minister of this character was entitled to the confidence of the English. Many of the highest rank unbosomed themselves to him without reserve, and gave him repeated assurances of their resolution to assert his master's right, in opposition to every pretender. As several pamphlets were dispersed, at this time, in England. containing objections to his title, James employed some learned men in his kingdom to answer these cavillers. and to explain the advantages which would result to both kingdoms by the union of the crowns. These books were eagerly read, and contributed not a little to reconcile the English to that event. A book published this year by the king himself, produced an effect still more favourable. It was intitled Basilicon Doron, and contained precepts concerning the art of government, addressed to prince Henry his son. Notwithstanding the great alterations and refinements in national taste since that time, we must allow this to be no contemptible performance, and not to be inferior to the works of most contemporary writers, either in purity of style or justness of composition. Even the vain

parade of erudition with which it abounds, and which now disgusts us, raised the admiration of that age; and as it was filled with those general rules which speculative authors deliver for rendering a nation happy, and of which James could discourse with great plausibility, though often incapable of putting them in practice, the English conceived a high opinion of his abilities, and expected an increase of national honour and prosperity, under a prince so profoundly skilled in politics, and who gave such a specimen both of his wisdom and of his love to his people.

The queen of England's sentiments concerning James were very different from those of her subjects. His excessive indulgence towards the Popish lords; the facility with which he pardoned their repeated treasons; his restoring Beaton, the Popish archbishop of Glasgow, who had fled out of Scotland at the time of the Reformation, to the possession of the temporalities of that benefice; the appointing him his ambassador at the court of France; the applause he bestowed, in the Basilicon Doron, on those who adhered to the queen his mother; Elizabeth considered as so many indications of a mind alienated from the Protestant religion:

Accuses him of corresponding with the pope. and suspected that he would soon revolt from the profession of it. These suspicions seemed to be fully confirmed by a discovery which came from the master of Gray, who resided at that time in Italy, and who, rather than suffer his intriguing spirit to be

idle, demeaned himself so far as to act as a spy for the English court. He conveyed to Elizabeth the copy of a letter, written by James to pope Clement VIII., in which the king, after many expressions of regard for that pontiff, and of gratitude for his favours, declared his firm resolution to treat the Roman Catholics with indulgence; and, in order to render the intercourse between the courts of Rome and Scotland more frequent and familiar, he solfcited the pope to

promote Drummond, bishop of Vaison, a Scotsman. to the dignity of a cardinal. Elizabeth, who had received by another channel some imperfect intelligence of this correspondence, was filled with just surprise, and immediately dispatched Bowes into Scotland, to inquire more fully into the truth of the matter, and to reproach James for an action so unbecoming a Protestant prince. He was astonished at the accusation. and with a confidence which nothing but the consciousness of innocence could inspire, affirmed the whole to be a mere calumny, and the letter itself to be forged by his enemies, on purpose to bring his sincerity in religion to be suspected. Elphingston, the secretary of state, denied the matter with equal solemnity. came, however, to be known by a very singular accident, which happened some years after, that the information which Elizabeth had received was well founded. though at the same time the king's declarations of his own innocence were perfectly consistent with truth. Cardinal Bellarmine, in a reply which he published to a controversial treatise, of which the king was the author, accused him of having abandoned the favourable sentiments which he had once entertained of the Roman Catholic religion, and, as a proof of this, quoted his letter to Clement VIII. It was impossible, any longer, to believe this to be a fiction; and it was a matter too delicate to be passed over without strict inquiry. James immediately examined Elphingston. and his confession unravelled the whole mystery. He acknowledged that he had shuffled in this letter among other papers, which he had laid before the king to be signed, who suspecting no such deceit, subscribed it together with the rest, and without knowing what it contained; that he had no other motive, however, to this action, but zeal for his majesty's service; and, by flattering the Roman Catholics with hopes of indulgence under the king's government, he imagined that he was paving the way for his more easy accession to

the English throne. The privy-council of England entertained very different sentiments of the secretary's conduct. In their opinion, not only the king's reputation, had been exposed to reproach, but his life to danger, by this rash imposture; they even imputed the gunpowder treason to the rage and disappointment of the Papists, upon finding that the hopes which this letter inspired, were frustrated. The secretary was sent a prisoner into Scotland, to be tried for high treason. His peers found him guilty, but, by the queen's intercession, he obtained a pardon.

According to the account of other historians, James himself was no stranger to this correspondence with the pope; and, if we believe them, Elphingston, being intimidated by the threats of the English council, and deceived by the artifices of the earl of Dunbar, concealed some circumstances in his narrative of this transaction, and falsified others; and at the expense of his own fame, and with the danger of his life, endeavoured to draw a veil over this part of his master's conduct.

James at great pains to gain the Roman Catholics. But whether we impute the writing of this letter to the secretary's officious zeal, or to the king's command, it is certain, that, about this time, James was at the utmost pains to gain the friendship of the Roman Catholic princes, as a necessary precaution

towards facilitating his accession to the English throne. Lord Home, who was himself a Papist, was intrusted with a secret commission to the pope; he archbishop of Glasgow was an active instrument with those of his own religion. The pope expressed such favourable sentiments both of the king, and of his rights to the crown of England, that James thought himself bound, some years after, to acknowledge the obligation in a public manner. Sir James Lindsay made great pro-

k State Trials, vol. i. 429. Spotsw. 456. 507. Johnst. 448.

1 Cald. vol. v. 322. vi. 147.

m Winw. Mem. vol. ii. 57. n Cald. vol. vi. 147. o Cald. vol. v. 604.

gress in gaining the English Papists to acknowledge his majesty's title. Of all these intrigues Elizabeth received obscure hints from different quarters. The more imperfectly she knew, the more violently she suspected the king's designs; and the natural jealousy of her temper increasing with age, she observed his conduct with greater solicitude than ever.

1600.
March 28.
His regulations with regard to the church.

The questions with regard to the election and power of the representatives of the church, were finally decided this year by the general assembly, which met at Montrose. That place was chosen as most convenient for the ministers of the north, among

the church. venient for the ministers of the north, among whom the king's influence chiefly lay. Although great numbers resorted from the northern provinces, and the king employed his whole interest, and the authority of his own presence, to gain a majority, the following regulations were with difficulty agreed on. That the general assembly shall recommend six persons to every vacant benefice, which gave a title to a seat in parliament, out of whom the king shall nominate one; that the person so elected, after obtaining his seat in parliament, shall neither propose nor consent to any thing there, that may affect the interest of the church, without special instructions to that purpose; that he shall be answerable for his conduct to every general assembly; and submit to its censure, without appeal, upon pain of infamy and excommunication; that he shall discharge the duties of a pastor, in a particular congregation; that he shall not usurp any ecclesiastical jurisdiction, superior to that of his other brethren; that if the church inflict on him the censure of deprivation, he shall thereby forfeit his seat in parliament; that he shall annually resign his commission to the general assembly, which may be restored to him, or not, as the assembly, with the king's approbation, shall judge most expedient for the good of the church. P Nothing could be more repugnant to the idea of episcopal go-

P Spotsw. 453. 457. Cald. vol. v. 368.

vernment, than these regulations. It was not in consequence of rights derived from their office, but of powers conferred by a commission, that the ecclesiastical persons were to be admitted to a seat in parliament; they were the representatives, not the superiors, of the clergy. Destitute of all spiritual authority, even their civil jurisdiction was temporary. James, however, flattered himself that they would soon be able to shake off these fetters, and gradually acquire all the privileges which belonged to the episcopal order. The clergy dreaded the same thing; and of course he contended for the nomination of these commissioners, and they opposed it, not so much on account of the powers then vested in them, as of those to which it was believed they would soon attain.

Gowrie's an unusual tranquillity. The clergy, after many struggles, were brought under great subjection; the Popish earls were restored

to their estates and honours, by the authority of parliament, and with the consent of the church; the rest of the nobles were at peace among themselves, and obedient to the royal authority; when, in the midst of this security, the king's life was exposed to the utmost danger, by a conspiracy altogether unexpected, and almost inexplicable. The authors of it were John Ruthven, earl of Gowrie, and his brother Alexander. the sons of that earl who was beheaded in the year 1584. Nature had adorned both these young men, especially the elder brother, with many accomplishments, to which education had added its most elegant improvements. More learned than is usual among persons of their rank; more religious than is common at their age of life; generous, brave, popular; their countrymen, far from thinking them capable of any atrocious crime, conceived the most sanguine hopes of their early virtues. Notwithstanding all these noble qualities, some unknown motive engaged them in a conspiracy, which, if we adhere to the account commonly received, must be transmitted to posterity, as one of the most wicked, as well as one of the worst concerted, of

which history makes any mention.

On the 5th of August, as the king, who resided during the hunting season in his palace of Falkland, was going out to his sport early in the morning, he was accosted by Mr. Alexander Ruthven, who, with an air of great importance, told the king, that the evening before he had met an unknown man, of a suspicious aspect, walking alone in a by-path, near his brother's house at Perth; and on searching him, had found, under his cloak, a pot filled with a great quantity of foreign gold; that he had immediately seized both him and his treasure, and without communicating the matter to any person, had kept him confined and bound in a solitary house; and that he thought it is duty to impart such a singular event first of all to his majesty. James immediately suspected this unknown person to be a seminary priest, supplied with foreign coin, in order to excite new commotions in the kingdom; and resolved to empower the magistrates of Perth, to call the person before them, and to inquire into all the circumstances of the story. Ruthven violently opposed this resolution, and with many arguments urged the king to ride directly to Perth, and to examine the matter in person. Meanwhile the chase began; and James, notwithstanding his passion for that amusement, could not help ruminating upon the strangeness of the tale, and on Ruthven's importunity. At last he called him, and promised when the sport was over to set out for Perth. The chase, however, continued long; and Ruthven, who all the while kept close by the king, was still urging him to make haste. At the death of the buck he would not allow James to stay till a fresh horse was brought him; and observing the duke of Lennox and the earl of Mar preparing to accompany the king, he entreated him to countermand them. This James refused; and though Ruthven's

impatience and anxiety, as well as the apparent perturbation in his whole behaviour, raised some suspicions in his mind; yet his own curiosity, and Ruthven's solicitations, prevailed on him to set out for Perth. When within a mile of the town, Ruthven rode forward to inform his brother of the king's arrival, though he had already dispatched two messengers for that purpose. At a little distance from the town, the earl, attended by several of the citizens, met the king, who had only twenty persons in his train. No preparations were made for the king's entertainment; the earl appeared pensive and embarrassed, and was at no pains to atone, by his courtesy or hospitality, for the bad fare with which he treated his guests. When the king's repast was over, his attendants were led to dine in another room, and he being left almost alone, Ruthven whispered him, that now was the time to go to the chamber where the unknown person was kept. James commanded him to bring Sir Thomas Erskine along with them: but instead of that Ruthven ordered him not to follow: and conducting the king up a stair-case, and then through several apartments, the doors of which he locked behind him, led him at last into a small study, in which there stood a man clad in armour, with a sword and dagger by his side. The king, who expected to have found one disarmed and bound, started at the sight, and inquired if this was the person; but Ruthven snatching the dagger from the girdle of the man in armour, and holding it to the king's breast, "Remember," said he, "how unjustly my father suffered by your command; you are now my prisoner; submit to my disposal without resistance or outcry; or this dagger shall instantly avenge his blood." James expostulated with Ruthven, entreated, and flattered him. The man whom he found in the study stood, all the while, trembling and dismayed, without courage either to aid the king, or to second his aggressor. Ruthven protested, that if the king raised no outcry, his life should be safe; and,

moved by some unknown reason, retired in order to call his brother, leaving to the man in armour the care of the king, whom he bound by oath not to make any

noise during his absence.

While the king was in this dangerous situation, his attendants growing impatient to know whither he had retired, one of Gowrie's domestics entered the room hastily, and told them that the king had just rode away towards Falkland. All of them rushed out into the street; and the earl, in the utmost hurry, called for their horses. But by this time his brother had returned to the king, and swearing that now there was no remedy, he must die, offered to bind his hands. Unarmed as James was, he scorned to submit to that indignity; and closing with the assassin, a fierce struggle ensued. The man in armour stood, as formerly, amazed and motionless; and the king, dragging Ruthven towards a window, which during his absence he had persuaded the person with whom he was left to open, cried with a wild and affrighted voice, "Treason! Treason! Help! I am murdered!" His attendants heard, and knew the voice, and saw at the window, a hand which grasped the king's neck with violence. They flew with precipitation to his assistance. Lennox and Mar, with the greater number, ran up the principal stair-case, where they found all the doors shut, which they battered with the utmost fury, endeavouring to burst them open. But Sir John Ramsey, entering by a back-stair, which led to the apartment where the king was, found the door open; and rushing upon Ruthven, who was still struggling with the king, struck him twice with his dagger, and thrust him towards the stair-case, where Sir Thomas Erskine and Sir Hugh Herries met, and killed him; he crying with his last breath, "Alas! I am not to blame for this action." During this scuffle the man who had been concealed in the study escaped unobserved. Together with Ramsey, Erskine, and Herries, one Wilson, a footman, entered the room where the king was, and before they

had time to shut the door, Gowrie rushed in with a drawn sword in each hand, followed by seven of his attendants well armed, and with a loud voice threatened them all with instant death. They immediately thrust the king into the little study, and shutting the door upon him, encountered the earl. Notwithstanding the inequality of numbers, Sir John Ramsey pierced Gowrie through the heart, and he fell down dead without uttering a word; his followers having received several wounds, immediately fled. Three of the king's defenders were likewise hurt in the conflict. A dreadful noise continued still at the opposite door, where many persons laboured in vain to force a passage; and the king being assured that they were Lennox, Mar, and his other friends, it was opened on the inside. They ran to the king, whom they unexpectedly found safe, with transports of congratulation; and he, falling on his knees, with all his attendants around him, offered solemn thanks to God for such a wonderful deliverance. The danger, however, was not yet over. The inhabitants of the town, whose provost Gowrie was, and by whom he was extremely beloved, hearing the fate of the two brothers, ran to their arms, and surrounded the house, threatening revenge, with many insolent and opprobrious speeches against the king. James endeavoured to pacify the enraged multitude, by speaking to them from the window; he admitted their magistrates into the house; related to them all the circumstances of the fact; and their fury subsiding by degrees, they dispersed. On searching the earl's pockets for papers that might discover his designs and accomplices, nothing was found but a small parchment bag, full of magical characters and words of enchantment; and, if we may believe the account of the conspiracy published by the king, "while these were about him the wound of which he died bled not: but as soon as they were taken away, the blood gushed out in great abundance." After all the dangerous adventures of this busy day, the king returned in the evening to Falkland, having committed the dead bodies of the two brothers to the custody of the magistrates of Perth.

The motives of the conspirators not easily explained. Notwithstanding the minute detail which the king gave of all the circumstances of this conspiracy against his life, the motives which induced the two brothers to attempt an action so detestable, the end they had in view, and the accomplices on whose aid they depended, were altogether unknown. The

words of Ruthven to the king gave some grounds to think that the desire of revenging their father's death had instigated them to this attempt. But, whatever injuries their father had suffered, it is scarcely probable that they could impute them to the king, whose youth, as well as his subjection at that time to the violence of a faction, exempted him from being the object of resentment, on account of actions which were not done by his command. James had even endeavoured to repair the wrongs which the father had suffered, by benefits to his children; and Gowrie himself, sensible of his favour, had acknowledged it with the warmest expressions of gratitude. Three of the earl's attendants, being convicted of assisting him in this assault on the king's servants, were executed at Perth; but they could give no light into the motives which had prompted their master to an action so repugnant to these acknowledg-Diligent search was made for the person concealed in the study, and from him great discoveries were expected. But Andrew Henderson, the earl's steward, who, upon a promise of pardon, confessed himself to be the man, was as much a stranger to his master's design as the rest; and though placed in the study by Gowrie's command, he did not even know for what end that station had been assigned him. whole transaction remained as impenetrably dark as ever; and the two brothers, it was concluded, had concerted their scheme without either confidant or accomplice, with unexampled secrecy as well as wickedness.

An accident no less strange than the other cir-

cumstances of the story, and which hap-Sprot's pened nine years after, discovered that this discoveries concernopinion, however plausible, was ill-founded; ing it. and that the two brothers had not carried on thèir machinations all alone. One Sprot, a notary, having whispered among several persons that he knew some secrets relating to Gowrie's conspiracy, the privycouncil thought the matter worthy of their attention. and ordered him to be seized. His confession was partly voluntary, and partly forced from him by torture. According to his account, Logan of Restalrig, a gentleman of an opulent fortune, but of dissolute morals, was privy to all Gowrie's intentions, and an accomplice in his crimes. Mr. Ruthven, he said, had frequent interviews with Logan in order to concert the plan of their operations; the earl had corresponded with him to the same purpose; and one Bour, Logan's confidant, was trusted with the secret, and carried the letters between them. Both Logan and Bour were now dead. But Sprot affirmed that he had read letters written both by Gowrie and Logan on that occasion; and in confirmation of his testimony, several of Logan's letters, which a curiosity fatal to himself had prompted Sprot to steal from among Bour's papers, were produced." These were compared, by the privy-council, with papers of Logan's hand-writing, and the resemblance was

r Logan's letters were five in number. One to Bour, another to Gowrie, and three of them without any direction; nor could Sprot discover the name of the person to whom they were written. Logan gives him the appellation of Right Honourable. It appears from this, however, and from other words in the letter, Crom. 95. that there were several persons privy to the conspiracy. The date of the first letter is July 18th. Mr. Ruthven had communicated the matter to Logan only five days before. Ibid. It appears from the original summons of forfuelture against Logan's heirs, that Bour, though he had letters addressed to him with regard to a conspiracy equally dangerous and important, was so illiterate that he could not read. "Jacobus Bour, literarum prorsus ignarus, dicti Georgii opera in legendis omnibus scriptis ad eum missis, vel-pertinentibus utebatur." This is altogether strange; and nothing but the capricious character of Logan can account for his choosing such a confidant.

manifest. Persons of undoubted credit, and well qualified to judge of the matter, examined them, and swore to their authenticity. Death itself did not exempt Logan from prosecution; his bones were dug up and tried for high-treason, and, by a sentence, equally odious and illegal, his lands were forfeited, and his posterity declared infamous. Sprot was condemned to be hanged for misprision of treason. He adhered to his confession to the last, and having promised on the scaffold, to give the spectators a sign in confirmation of the truth of what he had deposed, he thrice clapped

s By the Roman law, persons guilty of the crime of high-treason might be tried even after death. This practice was adopted by the Scots without any limitation, Parl. 1540, c. 69. But the unlimited exercise of this power was soon conceived to be dangerous; and the crown was laid under proper restrictions, by an act A. D. 1542, which has never been printed. The words of it are, " And because the said lords (i. e. the lords of articles) think the said act (viz. 1540,) too general, and prejudicial to the barons in the realm, therefore statutes and ordains that the said act shall have no place in time coming, but against the heirs of them that notoriously commit or shall commit lese majesty against the king's person, against the realm for averting the same, and against them that shall happen to betray the king's army allenarly, and being notoriously known in their time: and the heirs of these persons to be called and judged within five years after the decease of the said persons committers of the said crimes; and the said time being by-past, the said heirs never to be pursued for the same." The sentence against Logan violated this statute in two particulars. He was not notoriously known during his life to be an accomplice in the crime for which he was tried; and his heir was called in question more than five years after his death. It is remarkable that this statute seems not to have been attended to in the parliament which forfeited Logan. Another singular circumstance deserves notice. As it is a maxim of justice that no person can be tried in absence; and as lawyers are always tenacious of their forms, and often absurd in their devices for preserving them, they contrived that, in any process against a dead person, his corpse or bones shall be presented at the bar. Examples of this occur frequently in the Scottish history. After the battle of Corrichie, the dead body of the earl of Huntly was presented in parliament, before sentence of forfaulture was pronounced against him. For the same reason the bodies of Gowrie and his brother were preserved, in order that they might be produced in parliament. Logan's bones, in compliance with the same rule, were dug up. Mackenz. Crim. Law, Book i. Tit. 6. 6 22.

his hands after he was thrown off the ladder by the executioner.

But though it be thus unexpectedly discovered that Gowrie did not act without associates, little additional light is thrown, by this discovery, on the motives and intentions of his conduct. It appears almost incredible that two young men of such distinguished virtue should revolt all at once from their duty, and attempt a crime so atrocious as the murder of their sovereign. It appears still more improbable, that they should have concerted their undertaking with so little foresight and prudence. If they intended that the deed should have

t It appears that archbishop Spotswood was present at the execution of Sprot, Crom. 115. and yet he seems to have given no credit to his discoveries. The manner in which he speaks of him is remarkable: "Whether or not I should mention the arraignment and execution of George Sprot, who suffered at Edinburgh, I am doubtful. His confession, though voluntary and constant, carrying small probability. The man deposed, &c. It seemed to be a very fiction, and a mere invention of the man's own brain, for neither did he shew the letter, nor could any wise man think that Gowrie, who went about the treason so secretly, would have communicated the matter to such a man as Logan was known to be," p. 508. Spotswood could not be ignorant of the solemnity with which Logan had been tried, and of the proof brought of the authenticity of his letters. He himself was probably present in parliament at the trial. The earl of Dunbar, of whom he always speaks with the highest respect, was the person who directed the process against Logan. Such a peremptory declaration against the truth of Sprot's evidence notwithstanding all these circumstances, is surprising. Hamilton, the king's advocate at that time, and afterward earl of Hadington, represents the proof produced at Logan's trial as extremely convincing; and in an original letter of his to the king, the 21st of June, 1609, (in Bibl. Facult. Jurid.) after mentioning the manner in which the trial had been conducted, he thus goes on:

"When the probation of the summons was referred to the lords of articles' votes, they found uniformly, all in one voice, the said summons to be so clearly proved, that they seemed to contend who should be able most zealously to express the satisfaction of his heart, not only by the most pithy words, but by tears of joy; diverse of the best rank confessing, that, that whereof they doubted at their entry into the house was now so manifest, that they behoved to esteem them traitors who should any longer refuse to declare their

assured resolution of the truth of that treason."

remained concealed, they could not have chosen a more improper scene for executing it, than their own house If they intended that Henderson should have struck the blow, they could not have pitched on a man more destitute of the courage that must direct the hand of an assassin; nor could they expect that he, unsolicited, and unacquainted with their purpose, would venture on such a desperate action. If Ruthven meant to stab the king with his own hand, why did he withdraw the dagger, after it was pointed at his breast? How could he leave the king after such a plain declaration of his intention? Was it not preposterous to commit him to the keeping of such a timid associate as Henderson? For what purpose did he waste time in binding the hands of an unarmed man, whom he might easily have dispatched with his sword? Had Providence permitted them to embrue their hands in the blood of their sovereign, what advantage could have accrued to them by his death? And what claims or pretensions could they have opposed to the rights of his children?" Inevitable and instant vengeance, together with perpetual infamy, were the only consequences they could expect to follow such a crime.

On the other hand, it is impossible to believe that the king had formed any design against the life of the two brothers. They had not incurred his indignation by any crime; and were in no degree the objects of his jealousy

u It has been asserted, that, in consequence of the king's death, the earl of Gowrie might have pretended to the crown of England, as the son of Dorothy Stewart, daughter of lord Methven by Margaret of England, who after her divorce from the earl of Angus, took that nobleman for her third husband. Burnet, Hist of his own Times. But this assertion is ill-founded. It appears, from undoubted evidence, that lord Methven had only one child by queen Margaret, which died in its infancy, and Dorothea lady Ruthven was not the daughter of queen Margaret, but of Janet Stewart, lord Methven's second wife, a daughter of John, earl of Athol. Crawf. Peer. 329. And though Gowrie had really been descended from the blood royal of England, the king at that time had a son and a daughter; and besides them, lady Arabella Stewart, daughter of Charles, earl of Lennox, had a preferable title to the crown of England.

or hatred; nor was he of a spirit so sanguinary, or so noted for rash and desperate valour, as to have attempted to murder them in their own house, where they were surrounded with many domestics, he only with a slender and unarmed train; where they could call to their assistance the inhabitants of a city, at the devotion of their family, while he was at a distance from all aid; and least of all would he have chosen for his associates in such an enterprise the earl of Mar and the duke of Lennox, the former connected in close friendship with the house of Gowrie, and the latter married to one of the earl's sisters.

A conjecture concerning the intention of the conspirators. Which soever of these opposite systems we embrace; whether we impute the intention of murder to Gowrie, or to the king; insuperable difficulties arise, and we are involved in darkness, mystery, and contradictions. Perhaps the source of the whole conspiracy ought

to be searched for deeper, and by deriving it from a more remote cause, we may discover it to be less criminal.

Sir Henry Nevil, in a letter to Sir Ralph Winwood, imputes the death of the two brothers to a cause not mentioned by any of our historians. "Out of Scotland we hear that there is no good agreement, but rather an open diffidence, betwixt the king and his wife, and many are of opinion that the discovery of some affection between her and the earl of Gowrie's brother (who was killed with him) was the truest cause and motive of that tragedy." Winw. Mem. vol. i. 274. Whether the following passages in Nicholson's letter be any confirmation of that suspicion, is submitted to the reader. In his letter, Sept. 22, 1602, he mentions the return of Gowrie's two younger brothers into Scotland, and adds, "The coming in of these two, and the queen of Scots dealing with them, and sending away and furnishing Mrs. Beatrix [their sister] with such information as Sir Thomas Erskine has given, hath bred great suspicion in the king of Scots that they come not in but upon some dangerous plot." In another letter, January 1, 1603, "The day of writing my last, Mrs. Beatrix Ruthven was brought by the lady Paisley, and Mrs. of Angus, as one of their gentlewomen, into the court in the evening, and stowed in a chamber prepared for her by the queen's direction, where the queen had much time and conference with her. Of this the king got notice, and shewed his dislike thereof to the queen, gently reproving her for it, and examining quietly of the queen's servants of the same, and of other matters thereunto belonging, with such discretion and secrecy as requires such a matter."

To keep the king of Scots in continual dependance. was one great object of Elizabeth's policy. In order to this, she sometimes soothed him, and sometimes bribed his ministers and favourites; and when she failed of attaining her end by these means, she encouraged the clergy to render any administration which she distrusted unpopular, by decrying it, or stirred up some faction of the nobles to oppose and to overturn it. In that fierce age, men little acquainted with the arts of undermining a ministry by intrigue, had recourse to the ruder practice of rendering themselves masters of the king's person, that they might thereby obtain the direction of his councils. Those nobles, who seized the king at the Raid of Ruthven, were instigated and supported by Elizabeth. Bothwell, in all his wild attempts. enjoyed her protection, and when they miscarried, he was secure of a retreat in her dominions. The connexions which James had been forming of late with the Roman Catholic princes, his secret negotiations in England with her subjects, and the maxims by which he governed his own kingdom, all contributed to excite her jealousy. She dreaded some great revolution in Scotland to be approaching, and it was her interest to prevent it. The earl of Gowrie was one of the most powerful of the Scottish nobles, and descended from ancestors warmly attached to the English interest. He had adopted the same system, and believed the welfare of his country to be inseparably connected with the subsistence of the alliance between the two kingdoms. During his residence at Paris, he had contracted an intimate friendship with Sir Henry Neville, the queen's ambassador there, and was recommended by him to his court as a person of whom great use might be made.y Elizabeth received him as he passed through England with distinguished marks of respect and favour. From all these circumstances a suspicion may arise, that the plan of the conspiracy against the king was formed at that time in concert with her. Such a suspicion prevailed in that age, and from the letters of Nicholson. Elizabeth's agent in Scotland, it appears not to be destitute of foundation. An English ship was observed hovering for some time in the mouth of the Frith of Forth. The earl's two younger brothers fled into England after the ill success of the conspiracy, and were protected by Elizabeth. James himself, though he prudently concealed it, took great umbrage at her behaviour. None, however, of Elizabeth's intrigues in Scotland tended to hurt the king's person, but only to circumscribe his authority, and to thwart his schemes. His life was the surest safeguard of her own, and restrained the Popish pretenders to her crown, and their abettors, from desperate attempts to which their impatience and bigotry might, otherwise, have urged them on. To have encouraged Gowrie to murder his sovereign, would, on her part, have been an act of the utmost imprudence. Nor does this seem to have been the intention of the two brothers. Mr. Ruthven, first of all, endeavoured to decoy the king to Perth, without any attendants. When these proved more numerous than was expected, the earl employed a stratagem in order to separate them from the king, by pretending that he had rode away towards Falkland, and by calling hastily for their horses, that they might follow him. By their shutting James up, meanwhile, in a distant corner of the house, and by attempting to bind his hands, their design seems to have been rather to seize than to assassinate him. Though Gowrie had not collected his followers in such numbers as to have been able to detain him long a prisoner, in that part of the kingdom, by open force, he might soon have been conveyed aboard the English ship, which waited, perhaps, to receive him; and he might have been landed at Fastcastle, a house of Logan's, in which, according to many obscure hints in his letters, some rendezvous of the conspirators was to be held. Amidst the surprise and terror into which the king must have been thrown by the violence offered to him, it was extremely natural

for him to conclude that his life was sought. It was the interest of all his followers to confirm him in this belief, and to magnify his danger, in order to add to the importance and merit of their own services. Thus his fear, and their vanity, aided by the credulity and wonder which the contemplation of any great and tragical event, when not fully understood, is apt to inspire, augmented the whole transaction. On the other hand, the extravagance and improbability of the circumstances which were added, detracted from the credit of those which really happened; and even furnished pretences for calling in question the truth of the whole conspiracy.

Many disbelieve the account published by the king. The account of what had happened at Perth reached Edinburgh next morning. The privy-council commanded the ministers of that city instantly to assemble their people; and, after relating to them the circumstances of the conspiracy formed against the king's life,

to return public thanks to God for the protection which he had so visibly afforded him. But as the first accounts transmitted to Edinburgh, written in a hurry, and while the circumstances of the conspiracy were but imperfectly known, and the passions which it excited strongly felt, were indistinct, exaggerated, and contradictory, the ministers laid hold of this; and though they offered to give public thanks to God for the king's safety, they refused to enter into any detail of particulars, or to utter from the chair of truth what appeared to be still dubious and uncertain.

A few days after, the king returned to Edinburgh; and, though Galloway, the minister of his own chapel, made a harangue to the people at the public cross, in which he recited all the circumstances of the conspiracy; though James himself, in their hearing, confirmed his account; though he commanded a narrative of the whole transaction to be published; the ministers of that city, as well as many of their brethren, still continued incredulous and unconvinced. Their high esteem of Gowrie, their jealousy of every part of the king's con-

duct, added to some false and many improbable circumstances in the narrative, not only led them to suspect the whole, but gave their suspicions an air of credibility. But at length, the king, partly by arguments, partly by threats, prevailed on all of them, except Mr. Robert Bruce, to own that they were convinced of the truth of the conspiracy. He could be brought no farther than to declare, that he reverenced the king's account of the transaction, but could not say that he himself was persuaded of the truth of it. The scruples or obstinacy of a single man would have been little regarded; but as the same spirit of incredulity began to spread among the people, the example of one in so high reputation for integrity and abilities, was extremely dangerous. The king was at the utmost pains to convince and to gain Bruce, but finding it impossible to remove his doubts, he deprived him of his benefice, and after repeated delays, and many attempts towards a reconcilement, banished him the kingdom.2

Proceedings of parliament against the conspirators.

The proceedings of parliament were not retarded by any scruples of this sort. The dead bodies of the two brothers were produced there, according to law; an indictment for high treason was preferred against them; witnesses were examined; and, by an

them; witnesses were examined; and, by an unanimous sentence, their estates and honours were forfeited; the punishment due to traitors was inflicted on their dead bodies; and, as if the punishment hitherto in use did not express sufficient detestation of their crimes, the parliament enacted that the surname of Ruthven should be abolished; and, in order to preserve the memory of the king's miraculous escape, and to declare the sense which the nation had of the divine goodness, to all future ages, appointed the 5th of August to be observed, annually, as a day of public thanksgiving.<sup>2</sup>

<sup>2</sup> Spotsw. 461, &c. Cald. v. 389, &c.

<sup>&</sup>lt;sup>a</sup> A few weeks after the death of the two brothers, the king published a discourse of their vile and unnatural conspiracy against his life. In the year 1713, George earl of Cromartie published an "Historical

Essex's conspiracy against Elizabeth. Though Gowrie's conspiracy occasioned a sudden and great alarm, it was followed by no consequences of importance; and having been concerted by the two brothers, either without any associates, or with such as were

Account of the Conspiracy by the Earl of Gowrie and Robert Logan of Restalrig, against King James VI." He seems not to have seen the account which the king himself had given of that matter, and borrows the whole historical part from Spotswood and other authors; but he has extracted from the public records the depositions of the witnesses produced by the king's council, in order to make good the charge against the two brothers, and Logan their associate. From these two treatises our knowledge of all the material circumstances of the conspiracy is derived. The evidence which they contain, one would expect to be authentic and decisive. An account of a fact still recent, published by royal authority, and the original depositions of persons examined in presence of the highest court in the nation, ought to convey a degree of evidence seldom attained in historical relations, and to exclude all remaining doubt and uncertainty. But as every thing with regard to this transaction is dark and problematical, the king's account and the depositions of the witnesses not only vary, but contradict each other in so many circumstances, that much room is still left for hesitation and historical scepticism. The testimony of Henderson is the fullest and most important, but in several particulars the king's account and his are contradictory. I. According to the king's account, while Mr. Ruthven was holding the dagger at his breast, "the fellow in the study stood quaking and trembling." Disc. 17. But Henderson says, that he himself wrested the dagger out of Mr. Ruthven's hands. Disc. 53. Crom. 50. Henderson likewise boasted to his wife, that he had that day twice saved the king from being stabbed. Disc. 54. Crom. 53. II. The king asserts that Henderson opened the window during Mr. Ruthven's absence. Disc. 23. Henderson deposes that he was only attempting to open it when Mr. Ruthven returned, and that during the struggle between the king and him, he opened it. Disc. 53, 54. Crom. 51, 52. III. If we may believe the king, the fellow in the study stood, during the struggle, behind the king's back, inactive and trembling all the time. Disc. 27. But Henderson affirms, that he snatched away the garter with which Mr. Ruthven attempted to bind the king; that he pulled back Mr. Ruthven's hand, while he was endeavouring to stop the king's mouth, and that he opened the window. Disc. 54. Crom. 52. IV. By the king's account, Mr. Ruthven left him in the study, and went away in order to meet with his brother, and the earl came up the stairs for the same purpose. Disc. 23. Henderson deposes, that when Mr. Ruthven left the king, "he believes that he did not pass from the door." Crom. 51. It is apparent both from the situation of the house, and from other circumstances, that there

unknown, the danger was over as soon as discovered. But not long after, a conspiracy broke out in England against Elizabeth, which, though the first danger was instantly dispelled, produced tragical effects, that rendered the close of that queen's reign dismal and unhap-

could not possibly have been any interview between the brothers at this time. Disc. 23.

Henderson was twice examined, first at Falkland before the privycouncil in August, and next at Edinburgh before the parliament in November. Not to mention some lesser variations between these depositions, we shall point out two which are remarkable. 1. In his first deposition, Mr. Henderson relates the most material circumstance of the whole in these words: " Mr. Ruthven pulled out the deponent's dagger, and held the same to his majesty's breast, saying, Remember you of my father's murder; you shall now die for it: and pointing to his highness's heart, with the dagger, the deponent threw the same out of Mr. Ruthven's hands, and swore that as God should judge his soul, that if Mr. Ruthven had retained the dagger in his hand, the space a man may go six steps, he would have stricken the king to the hilts with it." Disc. 52. But at his second examination he varied from this in two material circumstances. First, the words he at that time put in Mr. Ruthven's mouth while he held the dagger at the king's breast are, "Sir, you must be my prisoner; remember on my father's death." Secondly, when he threatened him with death, it was only to deter him from making any noise, " Hold your tongue, or by Christ you shall die." 2. In his first deposition, the words of Mr. Ruthven, when he returned to the chamber where he had left the king, are, " There is no remedy, by God you must die." But in his second deposition, "By God there is no remedy, and offered to bind his majesty's hands." Crom. 51. The material words you must due are omitted. The first deposition seems plainly to intimate that it was Ruthven's intention to murder the king. The second would lead us to conclude that he had no other design than to detain him as a prisoner.

There are likewise some remarkable contradictions in the testimonies of the other witnesses. 1. In the discourse published by authority, it is insinuated that the tunult of the inhabitants was raised against the king, and that it required some art to pacify them. Disc. 32. The duke of Lennox confirms this in his deposition. Crom. 44. An act of privy-council summoning the magistrates of Perth to answer for that riot, is still extant. And yet Andrew Roy, one of the bailies of the town, deposes, that he himself raised the people, and that they took arms in order to assist the king. Crom. 66. 2. Henderson deposes, that he gave an evasire answer to Mr. John Moncrief, who inquired where he had been that morning, because the earl had commanded him not to let any man know that he had

py. As James was deeply interested in that event, it merits our particular notice.

The court of England was at this time divided between two powerful factions, which contended for the supreme direction of affairs. The leader of the one was Robert D'Evreux, earl of Essex; Sir Robert Cecil, the son of lord treasurer Burleigh, was at the head of the other. The former was the most accomplished and the most popular of all the English nobles; brave, generous, affable; though impetuous, yet willing to listen to the counsels of those whom he loved; an avowed, but not an implacable enemy; a friend no less constant than warm; incapable of disguising his own sentiments, or of misrepresenting those of others; better fitted for a camp than for a court; of a genius that qualified him for the first place in the administration, with a spirit which scorned the second as below his merit. He was soon distinguished by the queen, who, with a profusion uncommon to her, conferred on him, even in his earliest youth, the highest honours. Nor did this diminish the esteem and affection of his countrymen; but, by a rare felicity, he was at once the favourite of his sovereign, and the darling of the people. Cecil, on the other hand, educated in a court, and trained under a father deeply skilled in all its arts, was crafty, insinuating, industrious; and though possessed of talents which fitted him for the highest offices, he did not rely upon his merit alone for attaining them, but availed himself of every advantage, which his own address, or the mistakes of others, afforded him. Two such men were formed to be rivals and enemies. Essex despised the

been at Falkland. Disc. 54. Moncrief deposes to the same purpose. Crom 64. And yet George Hay, afterward lord Kinnoul, and the chancellor of Scotland, and Peter Hay, depose, that the earl, in their presence, asked Henderson, "Whom he found with the king at Falkland?" Crom. 70, 71. Which question seems to prove that he did not aim at keeping that journey a secret. In the Collection of Criminal Trials, published by Mr. Arnot in 1785, the evidence against the two brothers has been considered with great attention. P. 20, &c.

arts of Cecil as low and base. To Cecil, the earl's magnanimity appeared to be presumption and folly. All the military men, except Raleigh, favoured Essex. Most of the courtiers adhered to Cecil, whose manners more nearly resembled their own.

As Elizabeth advanced in years, the strugHis comespondence
with the Scottish king.

As Elizabeth advanced in years, the struggle between these two factions became more
violent. Essex, in order to strengthen himself, had early courted the friendship of the
king of Scots, for whose right of succession
he was a zealous advocate, and held a close correspondence hoff with him and with his principal ministers.

he was a zealous advocate, and held a close correspondence both with him and with his principal ministers. Cecil, devoted to the queen alone, rose daily to new honours, by the assiduity of his services, and the patience with which he expected the reward of them; while the earl's high spirit and impetuosity sometimes exposed him to checks from a mistress, who, though partial in her affections towards him, could not easily bear contradiction, and who conferred favours often unwillingly, and always slowly. His own solicitations, however, seconded maliciously by his enemies, who wished to remove him at a distance from court, advanced him to the command of the army employed in Ireland against Tyrone, and to the office of lord-lieutenant of that kingdom, with a commission almost unlimited. His success in that expedition did not equal either his own promises, or the expectations of Elizabeth. The queen, peevish from her disappointment, and exasperated against Essex by the artifices of his enemies, wrote him a harsh letter, full of accusations and reproaches. These his impatient spirit could not bear, and in the first transports of his resentment, he proposed to carry over a part of his army into England, and, by driving his enemies from the queen's presence, to reinstate himself in favour and in power. But, upon more mature thoughts, he abandoned this rash design, and setting sail with a few officers devoted to his person, landed in England, and posted directly to court. Elizabeth received him without any symptom either of affection or of displeasure.

By proper compliances and acknowledgments, he might have regained his former ascendant over the queen. But he thought himself too deeply injured to submit to these. Elizabeth, on the other hand, determined to subdue his haughty temper; and though her severity drew from him the most humble letters, she confined him to the lord keeper's house, and appointed commissioners to try him, both for his conduct during his government of Ireland, and for leaving that kingdom without her permission. By their sentence, he was suspended from all his offices, except that of master of the horse, and continued a prisoner during the queen's pleasure. Satisfied with having mortified his pride thus far, Elizabeth did not suffer the sentence to be recorded, and soon after allowed him to retire to his own house. During these transactions, which occupied several months, Essex fluctuated between the allegiance he owed to his sovereign, and the desire of revenge; and sometimes leaned to the one, and sometimes to the other. one of the intervals, when the latter prevailed, he sent a messenger into Scotland, to encourage the king to assert his own right to the succession by force of arms, and to promise that, besides the assistance of the earl and all his friends in England, lord Mountjoy, now lordlieutenant of Ireland, would join him with five thou-

James's cautious conduct.

sand men from that kingdom. But James did not choose to hazard the losing of a kingdom, of which he was just about to obtain possession, by a premature attempt to seize

it. Mountjoy, too, declined the enterprise, and Essex adopted more dutiful schemes; all thoughts of ambition

appearing to be totally effaced out of his mind.

The wild attempts of Essex.

This moderation, which was merely the effect of disgust and disappointment, was not of long continuance; and the queen, having not only refused to renew a lucrative grant

which she had formerly bestowed, but even to admit him into her presence, that new injury drove a temper, naturally impatient, and now much fretted, to absolute

despair. His friends, instead of soothing his rage, or restraining his impetuosity, added to both by their imprudent and interested zeal. After many anxious consultations, he determined to attempt to redress his wrongs by violence. But being conscious how unpopular such an enterprise would be, if it appeared to proceed from motives of private revenge alone, he endeavoured to give it the semblance of public utility, by mingling the king of Scotland's interest with his own. He wrote to James, that the faction which now predominated in the English court had resolved to support the pretensions of the infanta of Spain to the crown; that the places of the greatest importance in the kingdom were put into the hands of his avowed enemies; and that unless he sent ambassadors, without delay, to insist on the immediate declaration of his right of succession, their measures were so well concerted, that all his hopes would be desperate. who knew how disagreeable such a proposal would be to the queen of England, was not willing rashly to expose himself to her displeasure. Essex, nevertheless, blinded by resentment, and impatient for revenge, abandoned himself to these passions, and acted like a man guided by frenzy or despair. With two or three hundred followers incompletely armed, he attempted to assault a throne the best established in Europe. Sallying at their head out of his own house, he called on the citizens of London, if they either valued his life, or wished to preserve the kingdom from the dominion of the Spaniards, to take arms, and to follow his standard. He advanced towards the palace with an intention to drive Cecil and his faction out of the queen's presence, and to obtain a declaration of the Scottish king's right of succession. But, though almost adored by the citizens, not a man would join him in this wild enterprise. Dispirited by their indifference, deserted by some of his own attendants, and almost surrounded by the troops which marched against

b Birch, Mem. ii. 477.

him under different leaders into the city, he retreated to his own house; and without any bold effort, suitable to his present condition, or worthy of his former reputation for courage, he surrendered to his enemies.

As soon as James heard of Essex's ill success, he appointed the earl of Mar, and Bruce, abbot of Kinloss, to repair as his ambassadors to the court of England. The former of these was the person by whose means Essex had carried on his correspondence with the king. He was a passionate admirer of the earl's character, and disposed to attempt every thing that could contribute to his safety. Bruce, united in a close friendship with Mar, was ready to second him with equal zeal. Nor was the purpose of the embassy less friendly to Essex, than the choice of his ambassadors; they were commanded to solicit, in the warmest manner, for the earl's life, and if they found that the king, by avowing his friends, could either promote their designs, or contribute to their safety, they were empowered to lay aside all disguise, and to promise that he would put himself at their head, and claim what was due to him by force of arms.c before the ambassadors could reach London. Essex had suffered the punishment which he merited by his treason. Perhaps the fear of their interposing, in order to obtain his pardon, hastened his death. Elizabeth continued, for some time, irresolute concerning his fate, and could not bring herself to consign into the hands of the executioner, a man who had once possessed her favour so entirely, without a painful struggle between her resentment against his late misconduct, and her ancient affection towards him. The distress to which she was now reduced, tended naturally to soften the former, while it revived the latter with new tenderness; and the intercession of one faithful friend, who had interest with the queen, might perhaps have saved his life, and have procured him a remission, which, of herself, she was ashamed to grant. But this

generous nobleman had at that time no such friend. Elizabeth, solicited incessantly by her ministers, and offended with the haughtiness of Essex, who, as she imagined, scorned to sue for pardon, at last commanded the sentence to be put in execution. No sooner was the blow struck, than she repented of her own rashness, and bewailed his death with the deepest sorrow. James always considered him as one who had fallen a martyr to his service, and, after his accession to the English throne, restored his son to his honours, as well as all his associates in the conspiracy, and distinguished them with his favour.

James continues his intrigues in England.

The Scottish ambassadors, finding that they had arrived too late to execute the chief business committed to their charge, not only concealed that part of their in-

structions with the utmost care; but congratulated the queen, in their master's name, on her happy escape from such an audacious conspiracy. Elizabeth, though no stranger to the king's correspondence with Essex, or to that nobleman's intentions of asserting James's right to the crown, was not willing that these should be known to the people, and, for that reason, received the congratulations of the Scottish ambassadors with all possible marks of credit and good-will; and in order to sooth James, and to preserve the appearances of union between the two courts, increased the subsidy which she paid him annually. The ambassadors resided for some time in England, and were employed with great success, in renewing and extending the intrigues, which Bruce had formerly entered into with the English nobles. As Elizabeth advanced in years, the English turned their eyes more and more towards Scotland, and were eager to prevent each other in courting the favour of their future monarch. Assurances of attachment, professions of regard, and promises of support, were offered to James from every corner of the kingdon. Cecil himself, per-

ceiving what hopes Essex had founded on the friendship of the Scottish king, and what advantages he might have derived from it, thought it prudent to stand no longer at a distance from a prince, who might so soon become his master. But being sensible at the same sime how dangerous such an intercourse might might prove, under a mistress naturally jealous, and whose jealousy grew stronger with old age; though he entered into a correspondence with him, he carried it on with all the secrecy and caution necessary in his situation, and peculiar to his character.d James having gained the man whose opposition and influence he had hitherto chiefly dreaded, waited, in perfect security, till that event should happen which would open his way to the throne of England.e It was with some difficulty that he restrained within proper bounds his adherents in that kingdom, who, labouring to distinguish themselves by that officious zeal, with which a prince, who has a near prospect of mounting the throne, is always served, urged him to allow a motion to be made in parliament for declaring his right of succession to the crown. James prudently discouraged that design; but it was with no small satisfaction that he observed the ascendant he was acquiring in a court, the dictates of which he had been so long obliged to obey; and which had either prescribed or thwarted every step he had taken during the whole course of his reign. f

d See App. No. LIII.

e Dr. Birch, in his life of prince Henry, p. 232. has given some account of the mysterious mode in which this correspondence was carried on, and how the letters were conveyed from London to Dub lin, and from thence to Scotland. Notwithstanding the solicitude which Cecil repeatedly discovers that his letters should be destroyed as soon as the king had read them, a considerable number of them has been preserved, and published by Sir David Dalrymple in the year 1766. They were written by lord Henry Howard, under the inspection of Cecil, in a style affectedly obscure. The whole correspondence is more cerious than instructive.

Spotsw. 467, 471. Birch. Mem. ii. 514.

1602. Attempts to civilize the Highlanders. Notwithstanding the violent struggles of the political factions which divided the count, and the frequent revolutions which had happened there, since the king first took the reins of government into his own

hands, Scotland had enjoyed unusual tranquillity, being undisturbed by any foreign enemy, and free from any intestine commotion of long continuance. During this period. James endeavoured to civilize the Highlands and the Isles, a part of his dominions too much neglected by former monarchs, though the reformation of it was an object highly worthy of their care. long peace with England had afforded an opportunity of subduing the licentious spirit of the borderers, and of restraining their depredations, often no less ruinous to their countrymen than to their enemies. The inhabitants of the low country began, gradually, to forget the use of arms, and to become attentive to the arts of peace. But the Highlanders, retaining their natural fierceness, averse from labour, and inured to rapine. infested their more industrious neighbours by their continual incursions. James, being solicitous not only to repress their inroads, but to render them useful subjects, had at different times enacted many wise laws extremely conducive to these ends. All landlords, or chiefs of clans, were enjoined to permit no persons to reside in their estates who could not find sufficient surety for their good behaviour; they were required to make a list of all suspicious persons under their jurisdiction, to bind themselves to deliver them to justice, and to indemnify those who should suffer by their robberies; and in order to ascertain the faithful performance of these articles, the chiefs themselves were obliged to give hostages to the king, or to put pledges in his hands. Three towns, which might serve as a retreat for the industrious, and a nursery for arts and commerce, were appointed to be built in different parts

of the Highlands; one in Cantire, another in Lochaber, and a third in the isle of Lewis; and, in order to draw inhabitants thither, all the privileges of royal boroughs were to be conferred upon them. Finding it, however, to be no easy matter to inspire the natives of those countries with the love of industry, a resolution was taken to plant among them colonies of people from the more industrious counties. The first experiment was made on the isle of Lewis; and as it was advantageously situated for the fishing trade, a source from which Scotland ought naturally to derive great wealth, the colony transported thither was drawn out of Fife, the inhabitants of which were well skilled in that branch of commerce. But before they had remained there long enough to manifest the good effects of this institution, the islanders, enraged at seeing their country occupied by those intruders, took arms, and surprising them in the night-time, murdered some of them, and compelled the rest to abandon the settlement. The king's attention being soon after turned to other objects, we hear no more of this salutary pro-Though James did not pursue the design with that steady application and perseverance, without which it is impossible to change the manners of a whole people, he had the glory, however, not only of having first conceived the thought, but of having first pointed out the proper method of introducing the civil arts of life into that part of the island.h

Elizabeth's last illness and death.

After having long enjoyed a good state of health, the effects of a sound constitution, and the reward of uncommon regularity and temperance, Elizabeth began this winter to

feel her vigour decrease, and to be sensible of the infirmities of old age. Having removed on a very stormy day from Westminster to Richmond, whither

she was impatient to retire, her complaints increased. She had no formed fever; her pulse was good; but she ate little and could

h Parl. 1587. 1594. 1597. Spotsw. 468.

not sleep. Her distemper seemed to proceed from a deep melancholy, which appeared both in her countenance and behaviour. She delighted in solitude, she sat constantly in the dark; and was often drowned in tears.

No sooner was the queen's indisposition known, than persons of all ranks, and of all different sects and parties, redoubled their applications to the king of Scots, and vied with each other in professions of attachment to his person, and in promises of submission to his government. Even some of Elizabeth's own servants, weary of the length of her reign, fond of novelty, impatient to get rid of the burden of gratitude for past benefits, and expecting to share in the liberality of a new prince, began to desert her: and crowds of people hurried towards Scotland, eager to pre-occupy the favour of the successor, or afraid of being too late in

paying homage to him.

Meanwhile, the queen's disease increased, and her melancholy appeared to be settled and incurable. Various conjectures were formed concerning the causes of a disorder, from which she seemed to be exempted by the natural cheerfulness of her temper. Some imputed it to her being forced, contrary to her inclination, to pardon the earl of Tyrone, whose rebellion had for many years created her much trouble. Others imagined that it arose from observing the ingratitude of her courtiers, and the levity of her people, who beheld her health declining with the most indecent indifference, and looked forward to the accession of the Scottish king, with an impatience which they could not conceal. The most common opinion, at that time, and perhaps the most probable, was, that it flowed from grief for the earl of Essex. She retained an extraordinary regard for the memory of that unfortunate nobleman; and though she often complained of his obstinacy, seldom mentioned his name without tears. An accident happened soon after her retiring to Richmond, which revived her affection with new tenderness, and imbittered

her sorrows. The countess of Nottingham, being on her death-bed, desired to see the queen, in order to reveal something to her, without discovering which, she could not die in peace. When the queen came into her chamber, she told her, that while Essex lay under sentence of death, he was desirous of imploring pardon in the manner which the queen herself had prescribed, by returning a ring, which during the height of his favour she had given him, with a promise that if, in any future distress, he sent that back to her as a token, it should entitle him to her protection; that lady Scrope was the person he intended to employ in order to present it; that, by a mistake, it was put into her hands instead of lady Scrope's; and, that she having communicated the matter to her husband, one of Essex's most implacable enemies, he had forbid her either to carry the ring to the queen, or to return it to the earl. The countess having thus disclosed her secret, begged the queen's forgiveness: but Elizabeth, who now saw both the malice of the earl's enemies, and how unjustly she had suspected him of inflexible obstinacy, replied, "God may forgive you, but I never can;" and left the room in great emotion. From that moment, her spirit

k This anecdote concerning Elizabeth was first published by Osborne, Mem. of Eliz. p. 23.; is confirmed by the testimony of De Maurier, Mem. 260., and by the traditional evidence of lady Elizabeth Spelman, published by Dr. Birch, Negoc. 106. Camden mentions the queen's grief for Essex's death as one of the causes of her melancholy. Some original papers remain, which prove that this was commonly believed at the time. Birch. Mem. ii. 506. Essex. however, had been beheaded two years before her death, and there seems to have been no other reason, but that which we have assigned, why her sorrows should revive with so much violence at so great a distance of time. As the death of the countess of Nottingham happened about a fortnight before the queen's death, the coincidence of these events, together with the other evidence mentioned, adds so much probability to the story related by Osborne, as will entitle it to a place in history. The only objection to the account we have given of Elizabeth's attachment to Essex, arises from her great age. At the age of sixty-eight, the amorous passions are commonly abundantly cool, and the violence of all the passions, except one, is much abated. But the force of this objection is entirely removed by an author

sunk entirely; she could scarce taste food; she refused all the medicines prescribed by her physicians; declaring that she wished to die, and would live no longer. No entreaty could prevail on her to go to bed; she sat on cushions, during ten days and nights, pensive and silent, holding her finger almost continually in her mouth, with her eyes open, and fixed on the ground. The only thing to which she seemed to give any attention, was the acts of devotion performed in her apartment by the archbishop of Canterbury; and in these she joined with great appearance of fervour. Wasted, at last, as well by anguish of mind, as by long abstinence, she expired, without a struggle, on Thursday the 24th day of March, in the seventieth year of her age, and in the forty-fifth of her reign. 1

Foreigners often accuse the English of Her chaindifference and disrespect towards their racter. princes; but without reason. are more grateful than they to those monarchs who merit their gratitude. The names of Edward III. and Henry V. are mentioned by the English of this age with the same warmth as they were by those who shared in the blessings and splendour of their reigns. The memory of Elizabeth is still adored in England. historians of that kingdom, after celebrating her love of her people; her sagacity in discerning their true interest; her steadiness in pursuing it; her wisdom in the choice of her ministers; the glory she acquired by arms; the tranquillity she secured to her subjects; and the increase of fame, of riches, and of commerce. which were the fruits of all these; justly rank her among the most illustrious princes. Even the defects in her character, they observe, were not of a kind pernicious to her people. Her excessive frugality was not accompanied with the love of hoarding; and, though

who has illustrated many passages in the English history, and adorned more. Catalogue of Royal and Noble Authors, Article Esser.

Camd. Birch. Mem. ii. 506. Birch. Negoc. 206. Strype, iv.

373.

it prevented some great undertakings, and rendered the success of others incomplete, it introduced economy into her administration, and exempted the nation from many burdens, which a monarch, more profuse or more enterprising, must have imposed. Her slowness in rewarding her servants sometimes discouraged useful merit: but it prevented the undeserving from acquiring power and wealth, to which they had no title. Her extreme jealousy of those princes who pretended to dispute her right to the crown, led her to take such precautions, as tended no less to the public safety, than to her own; and to court the affections of her people, as the firmest support of her throne. Such is the picture

which the English draw of this great queen.

Whoever undertakes to write the history of Scotland. finds himself obliged, frequently, to view her in a very different, and in a less amiable light. Her authority in that kingdom, during the greater part of her reign, was little inferior to that which she possessed in her own. But this authority, acquired at first by a service of great importance to the nation, she exercised in a manner extremely pernicious to its happiness. industry in fomenting the rage of the two contending factions; by supplying the one with partial aid; by feeding the other with false hopes; by balancing their power so artfully, that each of them was able to distress, and neither of them to subdue the other; she rendered Scotland long the seat of discord, confusion, and bloodshed; and her craft and intrigues, effecting what the valour of her ancestors could not accomplish, reduced that kingdom to a state of dependance on England. The maxims of policy, often little consonant to those of morality, may, perhaps, justify this conduct. But no apology can be offered for her behaviour to queen Mary; a scene of dissimulation without necessity; and of severity beyond example. In almost all her other actions, Elizabeth is the object of our highest admiration; in this we must allow that she not only laid

aside the magnanimity which became a queen, but the feelings natural to a woman.

James proclaimed king of England. Though Elizabeth would never permit the question concerning the right of succession to the crown to be determined in parliament; nor declare her own sentiments concerning a point which she wished to remain an impe-

netrable mystery; she had, however, formed no design of excluding the Scottish king from an inheritance to which his title was undoubted. A short time before her death, she broke the silence which she had so long preserved on that subject, and told Cecil and the lord-admiral, "That her throne was the throne of kings; that she would have no mean person to ascend it, and that her cousin the king of Scots should be her successor." This she confirmed on her death-bed. As soon as she breathed her last, the lords of the privy-council proclaimed James King of England. All the intrigues carried on by foreigners in favour of the infanta, all the cabals formed within the kingdom to support the titles of lady Arabella and the earl of Hartford, disappeared in a moment; the nobles and people, forgetting their ancient hostilities with Scotland, and their aversion for the dominion of strangers, testified their satisfaction with louder acclamations than were usual at the accession of their native princes. Amidst this tumult of jov. a motion made by a few patriots, who proposed to prescribe some conditions to the successor, and to exact from him the redress of some grievances, before they called him to the throne, was scarcely heard; and Cecil, by stifling it, added to his stock of merit with his Sir Charles Percy, brother of the earl of new master. Northumberland, and Thomas Somerset, the earl of Worcestor's son, were dispatched to Scotland, with a letter to the king, signed by all the peers and privycounsellors then in London; informing him of the queen's death, of his accession to the throne, of their care to recognise his title, and of the universal applause

with which the public proclamation of it had been attended. They made the utmost haste to deliver this welcome message; but were prevented by the zeal of Sir Robert Carey, lord Hunsdon's youngest son, who. setting out a few hours after Elizabeth's death, arrived at Edinburgh on Saturday night, just as the king had gone to bed. He was immediately admitted into the royal apartment, and kneeling by the king's bed, acquainted him with the death of Elizabeth, saluted him king of England, Scotland, France, and Ireland; and as a token of the truth of the intelligence which he brought, presented him a ring, which his sister lady Scrope had taken from the queen's finger after her death. James heard him with a decent composure. But as Carey was only a private messenger, the information which he brought was not made public, and the king kept his apartment till the arrival of Percy and Somerset. Then his titles were solemnly proclaimed; and his own subjects expressed no less joy, than the English, at this increase of his dignity. As his presence was absolutely necessary in England, where the people were extremely impatient to see their new sovereign, he prepared to set out for that kingdom without delay. He appointed his queen to follow him within a few weeks. He committed the government of Scotland to his privy-council. He intrusted the care of his children to different noblemen. On the Sunday before his departure, he repaired to the church of St. Giles, and after hearing a sermon, in which the preacher displayed the greatness of the divine goodness in raising him to the throne of such a powerful kingdom without opposition or bloodshed, and exhorted him to express his gratitude, by promoting, to the utmost, the happiness and prosperity of his subjects; the king rose up, and addressing himself to the people, made many professions of unalterable affection towards them; promised to visit Scotland frequently; assured them that his Scottish subjects, notwithstanding his absence, should feel that he was their native prince, no less

than when he resided among them; and might still trust that his ears should be always open to their petitions, which he would answer with the alacrity and love of a parent. His words were often interrupted by the tears of the whole audience; who, though they exulted at the king's prosperity, were melted into sorrow by these tender declarations.<sup>m</sup>

On the 5th of April he began his journey, Takes poswith a splendid, but not a numerous train; session of and next day he entered Berwick. Wherthe throne. ever he came, immense multitudes were assembled to welcome him; and the principal persons in the different counties through which he passed, displayed all their wealth and magnificence in entertainments prepared for him at their houses. Elizabeth had reigned so long in England, that most of her subjects remembered no other court but hers, and their notions of the manners and decorums suitable to a prince were formed upon what they had observed there. It was natural to apply this standard to the behaviour and actions of their new monarch, and to compare him, at first sight, with the queen, on whose throne he was to be placed. James, whose manners were extremely different from hers, suffered by the comparison. had not that flowing affability, by which Elizabeth captivated the hearts of her people; and though easy among a few whom he loved, his indolence could not bear the fatigue of rendering himself agreeable to a mixed multitude. He was no less a stranger to that dignity with which Elizabeth tempered her familiarity. And, instead of that well-judged frugality with which she conferred titles of honour, he bestowed them with an undistinguishing profusion, that rendered them no longer marks of distinction, or rewards of merit. But these were the reflections of the few alone; the multitude continued their acclamations; and, amidst these, James entered London on the 7th of May, and took peaceable possession of the throne of England.

Conclusion.

Thus were united two kingdoms, divided from the earliest accounts of time, but destined, by their situation, to form one great monarchy. By this junction of its whole native force, Great Britain hath risen to an eminence and authority in Europe, which England and Scotland, while separate, could never have attained.

A view of the revolutions in the constitution of Scotland since the accession of James VI. The Scots had so long considered their monarchs as next heirs to the English throne, that they had full leisure to reflect on all the consequences of their being advanced to that dignity. But, dazzled with the glory of giving a sovereign to their powerful enemy, relying on the partiality of their native prince, and in full expectation of sharing liberally in the wealth and honours which he would now be able to bestow, they

attended little to the most obvious consequences of that great event, and rejoiced at his accession to the throne of England, as if it had been no less beneficial to the kingdom, than honourable to the king. They soon had reason, however, to adopt very different sentiments; and from that period we may date a total alteration in the political constitution of Scotland.

The feudal aristocracy, which had been subverted in most nations of Europe by the policy of their princes, or had been undermined by the progress of commerce, still subsisted with full force in Scotland. Many causes had contributed gradually to augment the power of the Scottish nobles; and even the Reformation, which, in every other country where it prevailed, added to the authority of the monarch, had increased their wealth and influence. A king possessed of a small revenue, with a prerogative extremely limited, and unsupported by a standing army, could not exercise much authority over such potent subjects. He was obliged to govern by expedients; and the laws derived their force not from his power to execute them, but from the voluntary submission of the nobles. But though this

produced a species of government extremely feeble and irregular; though Scotland, under the name, and with all the outward ensigns of a monarchy, was really subject to an aristocracy, the people were not altogether unhappy; and, even in this wild form of a constitution, there were principles which tended to their security and advantage. The king, checked and overawed by the nobles, durst venture upon no act of arbitrary power. The nobles, jealous of the king, whose claims and pretensions were many, though his power was small, were afraid of irritating their dependants by unreasonable exactions, and tempered the rigour of aristocratical tyranny, with a mildness and equality to which it is naturally a stranger. As long as the military genius of the feudal government remained in vigour, the vassals both of the crown and of the barons were generally not only free from oppression, but were courted by their superiors, whose power and importance were founded on their attachment and love.

But, by his accession to the throne of England, James acquired such an immense accession of wealth, of power, and of splendour, that the nobles, astonished and intimidated, thought it vain to struggle for privileges which they were now unable to defend. Nor was it from fear alone that they submitted to the yoke; James, partial to his countrymen, and willing that they should partake in his good fortune, loaded them with riches and honours; and the hope of his favour concurred with the dread of his power, in taming their fierce and independent spirits. The will of the prince became the supreme law in Scotland; and the nobles strove, with emulation, who should most implicitly obey commands which they had formerly been accustomed to contemn. Satisfied with having subjected the nobles to the crown, the king left them in full possession of their ancient jurisdiction over their own vas-The extensive rights, vested in a feudal chief, became in their hands dreadful instruments of oppression, and the military ideas, on which these rights

were founded, being gradually lost or disregarded. nothing remained to correct or to mitigate the rigour with which they were exercised. The nobles, exhausting their fortunes by the expense of frequent attendance upon the English court, and by attempts to imitate the manners and luxury of their more wealthy neighbours, multiplied exactions upon the people, who durst hardly utter complaints which they knew would never reach the ear of their sovereign, nor move him to grant them any redress. From the union of the crowns to the revolution in 1688, Scotland was placed in a political situation, of all others the most singular and the most unhappy; subjected at once to the absolute will of a monarch, and to the oppressive jurisdiction of an aristocracy, it suffered all the miseries peculiar to both these forms of government. Its kings were despotic; its nobles were slaves and tyrants; and the people groaned under the rigorous domination of both.

During this period, the nobles, it is true, made one effort to shake off the yoke, and to regain their ancient independence. After the death of James, the Scottish nation was no longer viewed by our monarchs with any partial affection. Charles I. educated among the English, discovered no peculiar attachment to the kingdom of which he was a native. The nobles, perceiving the sceptre to be now in hands less friendly, and swayed by a prince with whom they had little connexion, and over whose councils they had little influence, no longer submitted with the same implicit obedience. Provoked by some encroachments of the king on their order, and apprehensive of others, the remains of their ancient spirit began to appear. They complained and remonstrated. The people being, at the same time, violently disgusted at the innovations in religion, the nobles secretly heightened this disgust; and their artifices, together with the ill-conduct of the court, raised such a spirit, that the whole nation took arms against their sovereign, with a union and animosity of which there had formerly been no example. Charles brought against

them the forces of England, and, notwithstanding their own union, and the zeal of the people, the nobles must have sunk in the struggle. But the disaffection which was growing among his English subjects prevented the king from acting with vigour. A civil war broke out in both kingdoms; and after many battles and revolutions. which are well known, the Scottish nobles, who first began the war, were involved in the same ruin with the throne. At the restoration, Charles II. regained full possession of the royal prerogative in Scotland; and the nobles, whose estates were wasted, or their spirit broken, by the calamities to which they had been exposed, were less able and less willing than ever to resist the power of the crown. During this reign, and that of James VII. the dictates of the monarch were received in Scotland with the most abject submission. The poverty to which many of the nobles were reduced, rendered them meaner slaves, and more intolerable tyrants than ever. The people, always neglected, were now odious, and loaded with every injury, on account of their attachment to religious and political principles, extremely repugnant to those adopted by their princes.

The revolution introduced other maxims into the government of Scotland. To increase the authority of the prince, or to secure the privileges of the nobles. had hitherto been almost the sole object of our laws. The rights of the people were hardly ever mentioned, were disregarded, or unknown. Attention began, henceforward, to be paid to the welfare of the people. the claim of right, their liberties were secured; and the number of their representatives being increased, they gradually acquired new weight and consideration in parliament. As they came to enjoy more security, and greater power, their minds began to open, and to form more extensive plans of commerce, of industry, and of police. But the aristocratical spirit, which still predominated, together with many other accidents, retarded the improvement and happiness of the nation. Another great event completed what the revolution had begun. The political power of the nobles, already broken by the union of the two crowns, was almost annihilated by the union of the two kingdoms. Instead of making a part, as formerly, of the supreme assembly of the nation, instead of bearing the most considerable sway there, the peers of Scotland are admitted into the British parliament by their representatives only, and form but an inconsiderable part of one of those bodies in which the legislative authority is vested. They themselves are excluded absolutely from the house of commons, and even their eldest sons are not permitted to represent their countrymen in that august assembly. Nor have their feudal privileges remained, to compensate for this extinction of their political authority. As commerce advanced in its progress, and government attained nearer to perfection, these were insensibly circumscribed, and at last, by laws no less salutary to the public than fatal to the nobles, they have been almost totally abolished. As the nobles were deprived of power, the people acquired liberty. Exempted from burdens, to which they were formerly subject, screened from oppression to which they had been long exposed, and adopted into a constitution, whose genius and laws were more liberal than their own, they have extended their commerce, refined their manners, made improvements in the elegancies of life, and cultivated the arts and sciences.

This survey of the political state of Scotland, in which events and their causes have been mentioned rather than developed, enables us to point out three eras, from each of which we may date some great alteration in one or other of the three different members of which the supreme legislative assembly in our constitution is composed. At their accession to the throne of England, the kings of Scotland, once the most limited, became, in an instant, the most absolute princes in Europe, and exercised a despotic authority, which their parliaments were unable to control, or their nobles to resist. At the union of the two kingdoms

the feudal aristocracy, which had subsisted so many ages, and with power so exorbitant, was overturned, and the Scottish nobles, having surrendered rights and pre-eminences peculiar to their order, reduced themselves to a condition which is no longer the terror, and envy of other subjects. Since the union, the commons, anciently neglected by their kings, and seldom courted by their nobles, have emerged into dignity; and, being admitted to a participation of all the privileges which the English had purchased at the expense of so much blood, must now be deemed a body not less considerable in the one kingdom, than they have long been in the other.

The church felt the effects of the absolute power which the king acquired by his accession; and its revolutions, too, are worthy of notice. James, during the latter years of his administration in Scotland, had revived the name and office of bishops. But they possessed no ecclesiastical jurisdiction or pre-eminence; their revenues were inconsiderable, and they were scarcely distinguished by any thing but by their seat in parliament, and by being the object of the clergy's jealousy, and the people's hatred. The king, delighted with the splendour and authority which the English bishops enjoyed, and eager to effect a union in the ecclesiastical policy, which he had, in vain, attempted in the civil government of the two kingdoms, resolved to bring both churches to an exact conformity with each other. Three Scotsmen were consecrated bishops at London. From them, their brethren were commanded to receive orders. Ceremonies unknown in Scotland were imposed; and though the clergy, less obsequious than the nobles, boldly opposed these innovations, James, long practised and well-skilled in the arts of managing them, obtained at length their compliance. But Charles I. a superstitious prince, unacquainted with the genius of the Scots, imprudent and precipitant in all the measures he pursued in that kingdom, pressing too eagerly the reception of the English

liturgy, and indiscreetly attempting a resumption of church lands, kindled the flames of civil war; and the people being left at liberty to indulge their own wishes. the episcopal church was overturned, and the presbyterian government and discipline were re-established with new vigour. Together with monarchy, episcopacy was restored in Scotland. A form of government. so odious to the people, required force to uphold it: and though not only the whole rigour of authority, but all the barbarity of persecution, were employed in its support, the aversion of the nation was insurmountable, and it subsisted with difficulty. At the revolution, the inclinations of the people were thought worthy the attention of the legislature, the Presbyterian government was again established, and, being ratified by the union, is still maintained in the kingdom.

Nor did the influence of the accession extend to the civil and ecclesiastical constitutions alone; the genius of the nation, its taste and spirit, things of a nature still more delicate, were sensibly affected by that event. When learning revived in the fifteenth and sixteenth centuries, all the modern languages were in a state extremely barbarous, devoid of elegance, of vigour, and even of perspicuity. No author thought of writing in language so ill adapted to express and embellish his sentiments, or of erecting a work for immortality with such rude and perishable materials. As the spirit, which prevailed at that time, did not owe its rise to any original effort of the human mind, but was excited chiefly by admiration of the ancients, which began then to be studied with attention in every part of Europe, their compositions were deemed not only the standards of taste and of sentiment, but of style; and even the languages in which they wrote were thought to be peculiar, and almost consecrated to learning and Not only the manner of the ancients was the muses. imitated, but their language was adopted: and, extravagant as the attempt may appear to write in a dead tongue, in which men were not accustomed to think,

and which they could not speak, or even pronounce, the success of it was astonishing. As they formed their style upon the purest models; as they were uninfected with those barbarisms, which the inaccuracy of familiar conversation, the affectation of courts, intercourse with strangers, and a thousand other causes. introduce into living languages; many moderns have attained to a degree of elegance in their Latin compositions, which the Romans themselves scarce possessed beyond the limits of the Augustan age. was almost the only species of composition, and all authors, by using one common language, could be brought to a nearer comparison, the Scottish writers were not inferior to those of any other nation. happy genius of Buchanan, equally formed to excel in prose and in verse, more various, more original, and more elegant, than that of almost any other modern who writes in Latin, reflects, with regard to this particular, the greatest lustre on his country.

But the labour attending the study of a dead tongue was irksome; the unequal return for their industry which authors met with, who could be read and admired only within the narrow circle of the learned, was mortifying; and men, instead of wasting half their lives in learning the language of the Romans, began to refine and to polish their own. The modern tongues were found to be susceptible of beauties and graces, which, if not equal to those of the ancient ones, were at least more attainable. The Italians having first set the example, Latin was no longer used in works of taste; it was confined to books of science; and the politer nations have banished it even from these. The Scots. we may presume, would have had no cause to regret this change in the public taste, and would still have been able to maintain some equality with other nations, in their pursuit of literary honour. The English and Scottish languages, derived from the same sources, were, at the end of the sixteenth century, in a state nearly similar, differing from one another somewhat in orthography, though not only the words, but the idioms, were much the same. The letters of several Scottish statesmen of that age are not inferior in elegance, or in purity, to those of the English ministers with whom they corresponded. James himself was master of a style far from contemptible; and by his example and encouragement, the Scottish language might have kept pace with the English in refinement. Scotland might have had a series of authors in its own, as well as in the Latin language to boast of; and the improvements in taste, in the arts, and in the sciences, which spread over the other polished nations of Europe, would not have been unknown there.

But, at the very time when other nations were beginning to drop the use of Latin in works of taste, and to make trial of the strength and compass of their own languages, Scotland ceased to be a kingdom. The transports of joy, which the accession at first occasioned, were soon over: and the Scots, being at once deprived of all the objects that refine or animate a people; of the presence of their prince, of the concourse of nobles, of the splendour and elegance of a court, a universal dejection of spirit seems to have seized the nation. The court being withdrawn, no domestic standard of propriety and correctness of speech remained; the few compositions that Scotland produced were tried by the English standard, and every word or phrase that varied in the least from that, was condemned as barbarous; whereas, if the two nations had continued distinct, each might have retained idioms and forms of speech peculiar to itself; and these, rendered fashionable by the example of a court, and supported by the authority of writers of reputation, might have been viewed in the same light with the varieties occasioned by the different dialects in the Greek tongue; they even might have been considered as beauties; and in many cases, might have been used promiscuously by the authors of both nations. But, by the accession, the English naturally became the sole judges and lawgivers in language, and rejected as solecisms. every form of speech to which their ear was not accustomed. Nor did the Scots, while the intercourse between the two nations was inconsiderable," and ancient prejudices were still so violent as to prevent imitation. possess the means of refining their own tongue according to the purity of the English standard. On the contrary, new corruptions flowed into it from every different source. The clergy of Scotland, in that age, were more eminent for piety than for learning; and though there did not arise many authors among them, yet being in possession of the privilege of discoursing publicly to the people, and their sermons being too long, and perhaps too frequent, such hasty productions could not be elegant, and many slovenly and incorrect modes of expression may be traced back to that original. The pleadings of lawyers were equally loose and inaccurate, and that profession having furnished more authors, and the matters of which they treat mingling daily in common discourse and business, many of those vicious forms of speech, which are denominated Scotticisms, have been introduced by them into the language. Nor did either the language or public taste receive any improvement in parliament, where a more liberal and more correct eloquence might have been expected. All business was transacted there by the lords of ar-

n A remarkable proof of the little intercourse between the English and Scots before the union of the crowns, is to be found in two curious papers, one published by Haynes, the other by Strype. In the year 1567, Elizabeth commanded the bishop of London to take a survey of all the strangers within the cities of London and Westminster. By this report, which is very minute, it appears that the whole number of Scots at that time was fifty-eight. Haynes, 455. A survey of the same kind was made by Sir Thomas Row, lord-mayor, A. D. 1568. The number of Scots had then increased to eighty-eight. Strype, iv. Supplement, No. I. On the accession of James, a considerable number of Scots, especially of the higher rank, resorted to England; but it was not till the union that the intercourse between the two kingdoms became great.

ticles, and they were so servilely devoted to the court, that few debates arose, and, prior to the Revolution, none were conducted with the spirit and vigour natural

to a popular assembly.

Thus, during the whole seventeenth century, the English were gradually refining their language and their taste; in Scotland the former was much debased, and the latter almost entirely lost. In the beginning of that period, both nations were emerging out of barbarity; but the distance between them, which was then inconsiderable, became, before the end of it, inimense. Even after science had once dawned upon them, the Scots seemed to be sinking back into ignorance and obscurity; and active and intelligent as they naturally are, they continued, while other nations were eager in the pursuit of fame and knowledge, in a state of languor. This, however, must be imputed to the unhappiness of their political situation, not to any defect of genius; for no sooner was the one removed in any degree, than the other began to display itself. The act abolishing the power of the lords of articles, and other salutary laws passed at the Revolution, having introduced freedom of debate into the Scottish parliament, eloquence, with all the arts that accompany or perfect it, became immediate objects of attention; and the example of Fletcher of Salton alone is sufficient to shew that the Scots were still capable of generous sentiments, and, notwithstanding some peculiar idioms, were able to express themselves with energy and with elegance.

At length the union having incorporated the two nations, and rendered them one people, the distinctions which had subsisted for many ages gradually wear away; peculiarities disappear; the same manners prevail in both parts of the island; the same authors are read and admired; the same entertainments are frequented by the elegant and polite; and the same standard of taste and of purity in language, is established.

The Scots, after being placed, during a whole century, in a situation no less fatal to the liberty than to the taste and genius of the nation, were at once put in possession of privileges more valuable than those which their ancestors had formerly enjoyed; and every obstruction that had retarded their pursuit, or prevented their acquisition of literary fame, was totally removed.

## A CRITICAL

## DISSERTATION

CONCERNING

THE MURDER OF KING HENRY, AND THE GENUINE-NESS OF THE QUEEN'S LETTERS TO BOTHWELL.

It is not my intention to engage in all the controversies to which the murder of king Henry, or the letters from queen Mary to Bothwell, have given rise; far less to appear as an adversary to any particular author, who hath treated of them. To repeat, and to expose all the illfounded assertions, with regard to these points, which have flowed from inattention, from prejudice, from partiality, from malevolence, and from dishonesty, would be no less irksome to myself, than unacceptable to most of my readers. All I propose, is to assist others in forming some judgment concerning the facts in dispute, by stating the proofs produced on each side, with as much brevity as the case will admit, and with the same attention and impartiality which I have endeavoured to exercise in examining other controverted points in the Scottish history.

In order to account for the king's murder, two different systems have been formed. The one supposes Bothwell to have contrived and executed this crime. The other imputes it to the earls of Murray, Morton,

and their party.

The decision of many controverted facts in history, is a matter rather of curiosity than of use. They stand detached; and whatever we determine with regard to them, the fabric of the story remains untouched. But

the fact under dispute in this place is a fundamental and essential one, and according to the opinion which an historian adopts with regard to it, he must vary and dispose the whole of his subsequent narration. An historical system may be tried in two different ways, whether it be consistent with probability, and whether

it be supported by proper evidence.

Those who charge the king's murder upon Bothwell, argue in the following manner; and, though their reasonings have been mentioned already in different parts of the narrative, it is necessary to repeat them here. Mary's love for Darnley, say they, was a sudden and youthful passion. The beauty of his person, set off by some external frivolous accomplishments, was his chief merit, and gained her affections. His capricious temper soon raised in the queen a disgust, which broke out on different occasions. His engaging in the conspiracy against Rizio, converted this disgust into an antipathy, which she was at no pains to conceal. This breach was, perhaps, in its own nature irreparable; the king certainly wanted that art and condescension which alone could have repaired it. It widened every day, and a deep and settled hatred effaced all remains of affection. Bothwell observed this, and was prompted by ambition, and perhaps by love, to found upon it a scheme, which proved fatal both to the queen and to himself. He had served Mary at different times with fidelity and success. He insinuated himself into her favour, by address and by flattery. By degrees he gained her heart. In order to gratify his love, or at least his ambition, it was necessary to get rid of the king. Mary had rejected the proposal which, it is said, had been made to her for obtaining a divorce. The king was equally hated by the partisans of the house of Hamilton, a considerable party in the kingdom; by Murray, one of the most powerful and popular persons in his country; by Morton and his associates, whom he had deceived, and whom Bothwell had bound to his interest by a recent favour. Among the people Darnley was fallen under extreme contempt. Bothwell might expect, for all these reasons, that the murder of the king would pass without any inquiry, and might trust to Mary's love, and to his own address and good fortune, for the accomplishment of the rest of his wishes. What Bothwell expected really came to pass. Mary, if not privy herself to the design, connived at an action which rid her of a man whom she had such good reason to detest. A few months after the murder of her husband, she married the person who was both suspected and accused of having perpetrated that odious crime.

Those who charge the guilt upon Murray and his party reason in this manner: Murray, they say, was a man of boundless ambition. Notwithstanding the illegitimacy of his birth, he had early formed a design of usurping the crown. On the queen's return into Scot. land, he insinuated himself into her favour, and engrossed the whole power into his own hands. He set himself against every proposal of marriage which was made to her, lest his own chance of succeeding to the crown should be destroyed. He hated Darnley, and was no less hated by him. In order to be revenged on him, he entered into a sudden friendship with Bothwell, his ancient and mortal enemy. He encouraged him to assassinate Henry, by giving him hopes of marrying the queen. All this was done with a design to throw upon the queen herself the imputation of being accessary to the murder, and, under that pretext, to destroy Bothwell, to depose and imprison her, and to seize the sceptre which he had wrested out of her hands.

The former of these systems has an air of probability, is consistent with itself, and solves appearances. In the latter, some assertions are false, some links are wanting in the chain, and effects appear, of which no sufficient cause is produced. Murray, on the queen's return into Scotland, served her with great fidelity, and by his prudent administration rendered her so popular, and so powerful, as enabled her with ease to

quash a formidable insurrection raised by the party of which he was the leader in the year 1565. What motive could induce Murray to murder a prince without capacity, without followers, without influence over the nobles, whom the queen, by her neglect, had reduced to the lowest state of contempt, and who, after a long disgrace, had regained (according to the most favourable supposition) the precarious possession of her favour only a few days before his death? It is difficult to conceive what Murray had to fear from the king's It is still a more difficult matter to guess what he could gain by his death. If we suppose that the queen had no previous attachment to Bothwell, nothing can appear more chimerical than a scheme to persuade her to marry a man, whose wife was still alive. and who was not only suspected, but accused, of murdering her former husband. But that such a scheme should really succeed is still more extraordinary.—If Murray had instigated Bothwell to commit the crime, or had himself been accessary to the commission of it, what hopes were there that Bothwell would silently bear from a fellow-criminal all the prosecutions which he suffered, without ever retorting upon him the accusation, or revealing the whole scene of iniquity? An ancient and deadly feud had subsisted between Murray and Bothwell; the queen with difficulty had brought them to some terms of agreement. But, is it probable, that Murray would choose an enemy, to whom he had been so lately reconciled, for his confidant in the commission of such an atrocious crime? Or, on the other hand, would it ever enter into the imagination of a wise man, first to raise his rival to supreme power, in hopes that afterward he might render him odious, by accusing him of crimes which he had not committed, and, in consequence of this unjust charge, should be enabled to deprive him of that power. The most adventurous politician never hazarded such a dangerous experiment. The most credulous folly never trusted such an uncertain chance.

How strong soever these general reasonings may appear to be, it is not upon them alone that we must decide, but according to the particular evidence that is produced. This we now proceed to examine.

That Bothwell was guilty of the king's murder, appears, 1. From the concurring testimony of all the contemporary historians. 2. From the confession of those persons who suffered for assisting at the commission of the crime, and who entered into a minute detail of all its circumstances. Anders. ii. 165. 3. From the acknowledgment of Mary's own commissioners, who allow Bothwell to have been one of those who were guilty of this crime. Good. ii. 213. 4. From the express testimony of Lesly, bishop of Ross, to the same effect with the former. Def. of Q. Mary's Hon. And. i. 76. Id. iii. p. 31. 5. Morton, at his death, declared that Bothwell had solicited him, at different times, to concur in the conspiracy formed against the life of the king; and that he was informed by Archibald Douglas, one of the conspirators, that Bothwell was present at the murder. Crawf. Mem. App. 4. The letter from Douglas to the queen, which I have published in the Appendix to Vol. III. No. XLVII. confirms Morton's testimony. 6. Lord Herries promises, in his own name, and in the name of the nobles who adhered to the queen, that they would concur in punishing Bothwell as the murderer of the king. Append. Vol. III. No. XXIV.

The most direct charge ever brought against Murray is in these words of bishop Lesly: "Is it unknown," addressing himself to the earl of Murray, "what the lord Herries said to your face openly, even at your own table, a few days after the murder was committed? Did he not charge you with the foreknowledge of the same murder? Did he not, nulla circutione usus, flatly and plainly burden you, that riding in Fife, and coming with one of your most assured and trusty servants the same day whereon you departed from Edinburgh, said to him, among other talk, this night, ere morning, lord

Darnley shall lose his life?" Defence of Q. Mary, Anders. ii. 75. But the assertion of a man so heated with faction as Lesly, unless it were supported by proper evidence, is of little weight. The servant to whom Murray is said to have spoken these words, is not named; nor the manner in which this secret conversation was brought to light mentioned. Lord Herries was one of the most zealous advocates for Mary, and it is remarkable that, in all his negotiation at the court of England, he never once repeated this accusation of Murray. In answering the challenge given him by lord Lindsay, Herries had a fair opportunity of mentioning Murray's knowledge of the murder; but, though he openly accuses of that crime some of those who adhered to Murray, he industriously avoids any insinuation against Murray himself. Keith, Pref. xii. herself, in conversation with Sir Francis Knolles, accused Morton and Maitland of being privy to the murder, but does not mention Murray. And. iv. 55. When the bishop of Ross and lord Herries appeared before the English council, January 11, 1569, they declared themselves ready, in obedience to the queen's command, to accuse Murray and his associates of being accessary to the murder, but "they being also required, whether they, or any of them, as of themselves, would accuse the said earl in special, or any of his adherents, or thought them guilty thereof," they answered, "that they took God to witness that none of them did ever know any thing of the conspiracy of that murder, or were in council and foreknowledge thereof; neither who were devisors, inventors, and executors of the same, till it was publicly discovered long thereafter by some of the assassins, who suffered death on that account." Good. ii. 308. These words are taken out of the register kept by Ross and Herriesthemselves, and seem to be a direct confutation of the bishop's assertion.

The earls of Huntly and Argyll, in their Protestation touching the murder of the King of Scots, after mentioning the conference at Craigmillar concerning a divorce,

add. "So after these premises, the murder of the king fellowing, we judge, in our consciences, and hold for certain and truth, that the earl of Murray and secretary Lethington were authors, inventors, counsellors, and causers of the same murder, in what manner, or by whatsoever persons the same was executed." Anders. iv. 188. But, 1. This is nothing more than the private opinion or personal affirmation of these two noblemen. 2. The conclusion which they make has no connexion with the premises on which they found it. Because Murray proposed to obtain for the queen a divorce from her husband with her own consent, it does not follow that therefore he committed the murder without her knowledge. 3. Huntly and Argyll were at that time the leaders of that party opposite to Murray, and animated with all the rage of faction. 4. Both of them were Murray's personal enemies. Huntly, on account of the treatment which his family and clan had received from that nobleman. Argyll was desirous of being divorced from his wife, with whom he lived on no good terms, Knox, 328. and by whom he had no children. Crawf. Peer. 19. She was Murray's sister, and by his interest Argyll's design was obstructed. Keith, 551. These circumstances would go far towards invalidating a positive testimony; they more than counterbalance an indeterminate suspicion. 5. It is altogether uncertain whether Huntly and Argyll ever subscribed this protestation. A copy of such a protestation as the queen thought would be of advantage to her cause, was transmitted to them by her. Anders. iv. b. ii. 186. The protestation itself, published by Anderson, is taken from an unsubscribed copy with blanks for the date and place of subscribing. On the back of this copy, there is pasted, indeed, a paper, which Cecil has marked, "Answer of the Earl of Murray to a writing of the Earls of Huntly and Argyll." Anders. 194, 195. But it can hardly be deemed a reply to the above-mentioned protestation. Murray's answer bears date at London, Jan. 19, 1568. The

queen's letter, in which she inclosed the copy of the protestation, bears date at Bowton, Jan. 5, 1568. New it is scarce to be supposed that the copy could be sent into Scotland, be subscribed by the two earls, and be seen and answered by Murray within so short a time. Murray's reply seems intended only to prevent the impression which the vague and uncertain accusations of his enemies might make in his absence. Cecil had got the original of the queen's letter into his custody. Anders. iv. 185. This naturally leads us to conjecture that the letter itself, together with the inclosed protestation, were intercepted before they came to the hands of Huntly and Argyll. Nor is this mere conjecture alone. The letter to Huntly, in which the protestation was inclosed, is to be found; Cott. Lib. Cal. C. 1. fol. 280, and is an original subscribed by Mary, though not written by her own hand, because she seldom chose to write in the English language. The protestation is in the same volume, fol. 282, and is manifestly written by the same person who wrote the queen's letter. This seems to render it highly probable that both were intercepted. So that much has been founded on a paper not subscribed by the two earls, and probably never seen by them. Besides, this method which the queen took of sending a copy to the two earls, of what was proper for them to declare with regard to a conference held in their own presence, appears somewhat suspicious. It would have been more natural, and not so liable to any misinterpretation, to have desired them to write the most exact account, which they could recollect, of what had passed at the conversation at Craigmillar. 6. But even if all this reasoning should be set aside, and the authenticity of the protestation should be admitted in its fullest extent, it may still be a question, what degree of credit should be given to the assertion of the two earls, who were not only present in the first parliament held by Murray as regent, in December, 1567, in which the one carried the sceptre, and the other the sword of state, Spotsw. 241, but were both

members of the committee of lords of articles, and in that capacity assisted in framing all the acts by which the queen was deprived of the crown, and her son seated on the throne; and in particular concurred in the act by which it was declared, that whatever had befallen the queen "was in her awin default, in sa far as, be divers hir previe letters written halelie with hir awin hand, and send by hir to James sometyme Earle of Bothwell, cheif executour of the said horribill murthour, as weill befoir the committing thairof as thairaftir: And be hir ungodlie and dishonourabill proceeding to ane pretendit marriage with him, suddainlie and unprovisitlie thairaftir, it is maist certane that sche was previe, airt and pairt, of the actual devise and deid of the foirnamit murthour of the King her lauchful husband, and thairfoir justlie desirvis quhatsumever hes bene done to hir in ony tyme bygaine, or that sal be usit towards hir, for the said cause." Anders. ii. 221.

The queen's commissioners at the conferences in England accused Murray and his associates of having murdered the king. Good. ii. 281. But this charge is to be considered as a recrimination, extorted by the accusation preferred against the queen, and contains nothing more than loose and general affirmations, without descending to such particular circumstances as either ascertain their truth, or discover their falsehood. The same accusation is repeated by the nobles assembled at Dumbarton, Sept. 1568. Good. ii. 359. And the same observation may be made concerning it.

All the queen's advocates have endeavoured to account for Murray's murdering of the king, by supposing that it was done on purpose that he might have the pretence of disturbing the queen's administration, and thereby rendering ineffectual her general revocation of crown lands, which would have deprived him and his associates of the best part of their estates. Lesly, Def. of Mary's Hon. p. 73. Anders. iv. part ii. 130. But whoever considers the limited powers of a Scottish monarch, will see that such a revocation could not be

very formidable to the nobles. Every king of Scotland began his reign with such a revocation; and as often as it was renewed, the power of the nobles rendered it ineffectual. The best vindication of Murray and his party from this accusation, is that which they presented to the queen of England, and which hath never hitherto been published.

Answers to the Objections and Alledgance of the Queen, alledging the Earl of Murray, Lord Regent, the Earl of Morton, Marr, Glenaun, for that they abhorred and might not abide her Revocation of the Alienation made of her Property.

It is answered, that is, alledged, but [i. e. without] all appearance, and it appears God has bereft the alledgance of all wit and good remembrance, for thir reasons

following:

Imprimis, as to My Lord Regent, he never had occasion to grudge thereat, in respect the Queen made him privy to the same, and took resolution with him for the execution thereof, letting his Lordship know she would assuredly in the samine except all things she had given to him, and ratefy them in the next parliament as she did indeed; and for that cause wished my Lord to leave behind him Master John Wood, to attend upon the same, to whom she declared, that als well in that as in all other her grants it should be provided, yea of free will did promise and offer before ever he demanded, as it came to pass without any let or impediment; for all was ratified by her command, and hand-write, at the parliament, but [i. e. without] any difficulty.

Item, as to my Lord of Morton, he could not grudge thereat quha never had of her property worth twenty

dollars that ever I knew of.

Item, the same may I say of my Lord Glencairn. Item, the same I may say of my Lord Hume. Item, the same I may say of my Lord Ruthven.

Item, the same I may say of my Lord Lindsay.

Only my Lord of Marr had ane little thing of the property, quilk alsua was gladly and liberally confirmed to him, in the said parliament preceding a year; was never ane had any cause of miscontent of that revocation, far less to have put their lives and heritage to so open and manifest ane danger as they did for sic ane frivole cause.

Gyf ever any did make evill countenance, and show any miscontentment of the said revocation, it was my Lord of Argyll in special, quha spak largely in the time of parliament thairanents to the Queen herself, and did complain of the manifest corruption of ane act of parliament past upon her Majesty's return, and sa did lett any revocation at that time; but the armour for revenge of the king's deid was not till twa months after, at quhat time there was no occasion given thereof, nor never a man had mind thereof.

Having thus examined the evidence which has been produced against the earls of Murray and Bothwell; we shall next proceed to inquire whether the queen herself was accessary to the murder of her husband.

No sooner was the violent death of Darnley known, than strong suspicion arose, among some of her subjects, that Mary had given her consent to the commission of that crime. Anders. ii. 156. We are informed, by her own ambassador in France, the archbishop of Glasgow, that the sentiments of foreigners, on this head, were no less unfavourable to her. Keith, Pref. ix. Many of her nobles loudly accused her of that crime, and a great part of the nation, by supporting them, seem to have allowed the accusation to be well founded.

Some crimes, however, are of such a nature, that they hardly admit of a positive or direct proof. Deeds of darkness can seldom be brought perfectly to light. Where persons are accused not of being principals, but only of being accessaries in the commission of a crime; not of having perpetrated it themselves, but only of

giving consent to the commission of it by others; the proof becomes still more difficult: and unless when some accomplice betrays the secret, a proof by circumstances, or presumptive evidence, is all that can be attained. Even in judicial trials, such evidence is sometimes held to be sufficient for condemning criminals. The degree of conviction which such evidence carries along with it, is often not inferior to that which arises from positive testimony; and a concurring series of circumstances satisfies the understanding no less than the express declaration of witnesses.

Evidence of both these kinds has been produced against Mary. We shall first consider that which is

founded upon circumstances alone.

Some of these suspicious circumstances preceded the king's death; others were subsequent to it. With regard to the former, we may observe that the queen's violent love of Darnley was soon converted into an aversion to him no less violent; and that his own ill conduct and excesses of every kind, were such, that if they did not justify, at least they account for this sudden change of her disposition towards him. and progress of this domestic rupture, I have traced with great care in the history, and to the proofs of it which may be found in papers published by other authors, I have added those contained in App. No. XVI. and XVII. Le Croc, the French ambassador, who was an eye-witness of what he describes, not only represents her aversion to Darnley to be extreme, but declares that there could be no hopes of a reconcilement between them. "The queen is in the hands

Dec. 12.

of physicians, and I do assure you is not at all well; and do believe the principal part of her disease to consist in deep grief and sorrow; nor does it seem possible to make her forget the same. Still she repeats these words, I could wish to be dead. You know very well that the injury she has received is exceeding great, and her majesty will never forget it.—

To speak my mind freely to you, I do not expect, upon

several accounts, any good understanding between them [i. e. the king and queen], unless God effectually put to his hand.—His bad deportment is incurable; nor can there ever be any good expected from him, for several reasons, which I might tell you was I present with you. I cannot pretend to foretel how all may turn, but I will say, that matters cannot subsist long as they are, without being accompanied with sundry bad consequences." Keith, Pref. vii. Had Henry died a natural death at this juncture, it must have been considered as a very fortunate event to the queen, and as a seasonable deliverance from a husband who had become altogether odious to her. Now as Henry was murdered a few weeks afterward, and as nothing had happened to render the queen's aversion to him less violent, the opinion of those who consider Mary as the author of an event which was manifestly so agreeable to her, will appear perhaps to some of our readers to be neither unnatural nor over refined. If we add to this, what has been observed in the history, that in proportion to the increase of Mary's hatred of her husband, Bothwell seems to have made progress in her favour, and that he became the object not only of her confidence but her attachment, that opinion acquires new strength. It is easy to observe many advantages which might redound to Mary as well as to Bothwell from the king's death; but excepting them, no person, and no party in the kingdom, could derive the least benefit from that event. Bothwell, accordingly, murdered the king, and it was, in that age, thought no unwarranted imputation on Mary's character, to suppose that she had consented to the deed.

The steps which the queen took after her husband's death add strength to that supposition. 1. Melvil, who was in Edinburgh at the time of the king's death, asserts that "every body suspected the earl of Bothwell; and those who durst speak freely to others, said plainly that it was he." p. 155. 2. Mary having issued a proclamation, on the 12th of February, offering a reward

to any person who should discover those who had murdered her husband; And. i. 36.; a paper in consequence of this was affixed to the gates of the Tolbooth. February 16. in which Bothwell was named as the chief person guilty of that crime, and the queen herself was accused of having given her consent to it. And. ii. 156. 3. Soon after, February 20. the earl of Lennox, the king's father, wrote to Mary, conjuring her, by every motive, to prosecute the murderers with the utmost rigour. He plainly declared his own suspicions of Bothwell, and pointed out a method of proceeding against him, and for discovering the authors of that crime, no less obvious than equitable. He advised her to seize, and to commit to sure custody, Bothwell himself, and such as were already named as his accomplices; to call an assembly of the nobles; to issue a proclamation, inviting Bothwell's accusers to appear; and if, on that encouragement, no person appeared to accuse them, to hold them as innocent, and to dismiss them without farther trial. And. i. 40. 4. Archbishop Beatoun, her ambassador in France, in a letter to Mary, March 9th, employs arguments of the utmost weight to persuade her to prosecute the murderers with the greatest severity. "I can conclude nathing (says he) by quhat Zour Majesty writes to me zourself, that sen it has plesit God to conserve zow to make a rigorous vengeance thereof, that rather than it be not actually taine, it appears to me better in this warld that ze had lost life and all. I ask Your Majestie pardon, that I writ sa far, for I can heir nathing to zour prejudise, but I man constraindly writ the samin, that may

must come to zour knawledge; for the better remede may be put therto. Heir it is needfull that ze forth shaw now rather than ever of before, the greite vertue, magnanimitie, and constance that God has grantit zow, be quhais grace, I hope ze sall overcome this most heavy envie and displesir of the committing therof, and conserve that reputation in all godliness, ze have conquist of lang, quhich can appear na wayis mair

sach clearie, than that zou do sick justice that the haill world may declare zour innocence, and male give testimony for ever of thair treason that without has committed (but fear of God or man) so cruel and ungodlie a murther, quhairof there is sa meikle ill spoken, that I am constrainit much to ask zow mercy, that neither can I or will I make the rehearsal thereof, which is owr odious. 1.00 But alas! Madame, all over Europe this day, there is na purpose in head sa frequent as of Zour Majestie, and of the present state of zour realm, quhilk is in the most part interpretit sinisterly." Keith, Pref. ix. 5. Elizabeth, as appears from Append. Vol. III. No. XIX., urged the same thing in strong terms. 6. The circumstances of the case itself, no less than these solicitations and remonstrances, called for the utmost vigour in her proceedings. Her husband had been murdered in a cruel manner, almost in her own presence. Her subjects were filled with the utmost horror at the crime. Bothwell, one of her principal favourites, had been publicly accused as the author of it. Reflections, extremely dishonourable to herself, had been thrown out. If indignation, and the love of justice, did not prompt her to pursue the murderers with ardour, decency, at least, and concern for vindicating her own character, should have induced her to avoid any ap-

But instead of this, Mary continued to discover, in all her actions, the utmost partiality towards Bothwell. On the 15th of February, five days after the murder, she bestowed on him the reversion of the superiority of the town of Leith, which, in the year 1565, she had

pearance of remissness or want of zeal.

Maria Dei gratia Regina Scotorum, omnibus probis hominibus suis ad quos præsentes literæ pervenerint salutem. Sciatis, quod nos ad memoriam reducentes multiplex bonum verum et fidele servitium, non tantum quondam nostræ charissimæ matri Mariæ Reginæ regni nostri pro tempore in nostra minoritate factum et impensum, verum

<sup>&</sup>lt;sup>2</sup> Copy from the original in the Charter-house of the City of Edinburgh of an Assignation to the reversion of the superiority of Leith by Queen Mary, to the Eurl of Bothwell.

mortgaged to the citizens of Edinburgh. This grant was of much importance, as it gave him not only the command of the principal port in the kingdom, but a great ascendant over the citizens of Edinburgh, who wished much to keep possession of it. 2. Bothwell being extremely desirous to obtain the command of the castle of Edinburgh, the queen, in order to prevail on the earl of Mar to surrender the government of it, offered to commit the young prince to his custody. Mar consented; and she instantly appointed Bothwell governor of the castle. And. i. Pref. 64. Keith, 379, note (d.)

etiam nobismet ipsis, tam intra partes Galliæ quam intra hoc nostrum regnum, ad extentionem nosti honoris et auctoritatis in punitione furum, malefactorum, et transgressorum infra idem, per nostrum confisum consanguineum et consiliarium Jacobum comitem Bothuile, dominum Halis, Creighton, et Liddisdale, magnum admirallum regni nostri, commissionem et onerationem ad hunc effectum habentem, per quas ipse suum corpus et vitam in magno periculo posuit; ac etiam, in performatione et extentione nostri dicti servitii, suam hereditatem, supra summam viginti millium mercarum hujus nostri regni, alienavit ac læsit. Et nos cogitantes quod, ex nostra principali honore et devoria dictum nostrum confisum consanguineum et consiliarium cum quodam accidente et gratitudine recompensare et gratificare incumbit quæ nos commodè sibi concedere poterimus, unde ipse magis habilis omnibus affuturis temporibus esse poterit, et ad hujusmodi performandum in omnibus causis seu eventibus: In recompensationem quorum præmissorum, ac pro diversis aliis nostris rationabilibus causis et considerationibus nos moventibus, Fecimus, &c. dictum Jacobum comitem Bothuile, &c. ac suos hæredes masculos quoscumque nostros legitimos, &c. assignatos in et ad literas reversionis factas, &c. per Symonem Preston de eodem militem, præpositum, balivos, consules, et communitatem hujus nostri burgi de Edinburgh, pro scipsis ac suis successoribus, &c. nobis, notrisque heredibus, successoribus, et assignatis pro redemptione, &c. superioritatis totius villæ de Leith, &c. impignoratæ per nos dictis præposito, &c. sub reversione alienatæ continentis summam decem millium mercarum monetæ præscriptæ numerandum et calculandum in parochiali ecclesia de Edinburgh, super premonitione quadriginta dierum, ut moris est, veluti in dictis reversionis literis, &c. de data 8vo Octob. 1565, &c. (The rest is form, and contains a clause of absolute warrandice.) In cujus REI TESTIMONIUM præsentibus magrum sigillum nostrum apponi fecimus. Apud Edinburgh, decimo quinto die mensis Februarii, anno Domini millesimo quingentesimo sexagesimo sexto, et regui nostri vicesimo quinto.

The great seal entire.

3. The inquiry into the murder, previous to Bothwell's trial, seems to have been conducted with the utmost remissness. Buchanan exclaims loudly against this. And. ii. 24. Nor was it without reason that he did so. as is evident from a circumstance in the affidavit of Thomas Nelson, one of the king's servants, who was in the house when his master was murdered, and was dug up alive out of the rubbish. Being examined on the Monday after the king's death, "This deponar schew that Bonkle had the key of the sellare, and the Queenis servandis the keyis of her shalmir. Quhilk the laird of Tillibardin hearing, said, Hald thair, here is ane ground. Efter quhilk words spokin, that left of, and procedit na farther in the inquisition." And. iv. p. 2. 167. Had there been any intention to search into the bottom of the matter, a circumstance of so much importance merited the most careful inquiry. 4. Notwithstanding Lennox's repeated solicitations, notwithstanding the reasonableness of his demands, and the necessity of complying with them, in order to encourage any accuser to appear against Bothwell, she not only refused to commit him to custody, or even to remove him from her presence and councils; And. i. 42. 48.; but by the grants which we have mentioned, and by other circumstances, discovered an increase of attachment to him. 5. She could not avoid bringing Bothwell to a public trial; but she permitted him to sit as a member in that meeting of the privy-council which directed his own trial; and the trial itself was carried on with such unnecessary precipitancy, and with so many other suspicious circumstances, as to render his acquittal rather an argument of his guilt than a proof of his innocence. These circumstances have all been mentioned at length in Book IV. and therefore are not repeated in this place. 6. Two days after the trial, Mary gave a public proof of her regard for Bothwell, by appointing him to carry the sceptre before her at the meeting of parliament. Keith, 378. 7. In that parliament, she granted him a ratification of

all the great possessions and honours which she had conferred upon him, in which was contained an ample enumeration of all the services he had performed. And. i. 117. 8. Though Melvil, who foresaw that her attachment to Bothwell would at length induce her to marry him, warned her of the infamy and danger which would attend that action, she not only disregarded this salutary admonition, but discovered what had passed between them to Bothwell, which exposed Melvil to his resentment. Melv. 156. 9. Bothwell seized Mary as she returned from Stirling, April 24. If he had done this without her knowledge and consent. such an insult could not have failed to have filled her with the most violent indignation. But according to the account of an old MS. " The friendly love was so highly contracted between this great princess and her enormous subject, that there was no end thereof (for it was constantly esteemed by all men, that either of them loved other carnally), so that she suffered patiently to be led where the lover list, and all the way neither made obstacle, impediment, clamour, or resistance, as in such accidents used to be, or that she might have done by her princely authority, being accompanied with the noble earl of Huntly and secretary Maitland of Lethington." Keith, 383. Melvil, who was present, confirms this account, and tells us that the officer, by whom he was seized, informed him that nothing was done without the queen's consent. Melv. 158. 10. On the 12th of May, a few days before her marriage, Mary declared that she was then at full liberty, and that though Bothwell had offended her by seizing her person, she was so much satisfied with his dutiful behaviour since that time, and so indebted to him for past services, that she not only forgave that offence, but resolved to promote him to higher honours. And. i. 87. 11. Even after the confederate nobles had driven Bothwell from the queen's presence, and though she saw that he was considered as the murderer of her former husband by so great a part of her subjects, her affection did not in the least

abate, and she continued to express the most unalterable attachment to him. "I can perceive (says Sir N. Throkmorton) that the rigour with which the queen is kept, proceedeth by order from these men, because that the queen will not by any means be induced to lend her authority to prosecute the murderer; nor will not consent by any persuasion to abandon the lord Bothwell for her husband, but avoweth constantly that she will live and die with him; and saith, that if it were put to her choice to relinquish her crown and kingdom, or the lord Bothwell, she would leave her kingdom and dignity to go a simple damsel with him, and that she will never consent that he shall fare worse, or have more harm than herself." Append. Vol. III. No. XXII. all their negotiation with Throkmorton, the confederates mention this unalterable attachment of the queen to Bothwell as a sufficient reason for rejecting his proposals of an accommodation with their sovereign. Keith. 419. 449. This assertion they renewed in the conferences at York. Anders. iv. part ii. p. 66. Murray, in his interview with Mary in Lochlevin, charged her with persisting in her inordinate affection to Bothwell. Keith, All these, however, may be considered merely as accusations brought by the confederates, in order to vindicate their rigour towards the queen. But Throkmorton, who, by his residence in Edinburgh, and by his intercourse with the queen's partisans, as well as with her enemies, had many opportunities of discovering whether or not Mary had expressed herself in such terms, and who was disposed to view her actions in the most favourable light, appears, by the passage which I have quoted from his letter of the 14th of July, to be persuaded that the confederates had not misrepresented her sentiments. He had soon an opportunity of being confirmed with greater certainty in this opinion. though the confederates had refused him access to the captive queen, he found means of holding a secret correspondence with her, and endeavoured to persuade her to give her consent to have her marriage with Bothwell

dissolved by a sentence of divorce, as the most probable means of regaining her liberty. "She hath sent me word that she will in no wise consent unto that, but rather die." Append. Vol. III. No. XXII. There is evidence of the continuance of Mary's attachment still more explicit. Lord Herries, in the parliament held the 15th of December, 1567, acknowledged the queen's inordinate affection to that wicked man, and that she could not be induced by persuasion to leave him; and that in sequestering her within Lochlevin, the confederates had done the duty of noblemen. Appendix, Vol. III. No. XXIV. In the year 1571, a conference was held by some deputies from a convention of clergy, with the duke of Chatelherault, secretary Maitland, Sir James Balfour, and Kirkaldy; and an account of it written by Mr. Craig, one of the ministers of Edinburgh, is extant in Calderwood MSS. Hist. ii. 244. In presence of all these persons, most of whom were in Edinburgh when the queen was taken at Carberry, Maitland, who was now an avowed partisan of Mary, declares, that on the same night she was brought to Edinburgh, he himself had offered, that if she would abandon Bothwell, she should have as thankful obedience as ever she had since she came to Scotland. But in no wise would she consent to leave Bothwell. According to Sir James Melvil, the queen found means of writing a letter to Bothwell on the evening of that day, when she was conducted as a prisoner to Edinburgh, in which she declared her affection to him in the most tender expressions, and her resolution never to abandon him. This letter, he says, was intercepted by the confederates, and determined them to confine Mary in the castle of Lochlevin. But as neither Buchanan nor Knox, both abundantly disposed to avail themselves of every fact and report that could be employed in order to represent Mary's conduct as improper and criminal, mention this letter; and as the confederates themselves in their negotiation with Throkmorton, as well as in their accusations of the queen before the English commissioners at York and

Westminster, maintain the same silence with regard to it, I am satisfied that Melvil, who wrote his memoirs for the information of his son in his old age; and long after the events which he records happened, has been mistaken with regard to this particular. From this long enumeration of circumstances, we may, without violence, draw the following conclusion: Had Mary really been accessary to the murder of her husband; had Bothwell perpetrated the crime with her consent, or at her command; and had she intended to stifle the evidence against him, and to prevent the discovery of his guilt, she could scarcely have taken any other steps than those which she took, nor could her conduct have been more repugnant to all the maxims of prudence and of decency.

The positive evidence produced against Mary may be classed under two heads.

1. The depositions of some persons who were employed in committing the murder, particularly of Nicholas Hubert, who in the writings of that age is called French Paris. This person, who was Bothwell's servant, and much trusted by him, was twice examined, and the original of one of his depositions, and a copy of the other, are still extant. It is pretended that both these are notorious forgeries. But they are remarkable for a simplicity and narrete which it is almost impossible to imitate; they abound with a number of minute facts and particularities, which the most dexterous forger could not have easily assembled and connected together with any appearance of probability; and they are filled with circumstances which can scarcely be supposed to have entered the imagination of any man but one of Paris's rank and character. But, at the same time, it must be acknowledged, that his depositions contain some improbable circumstances. He seems to have been a foolish talkative fellow; the fear of death. the violence of torture, and the desire of pleasing those in whose power he was, tempted him, perhaps, to feign some circumstances, and to exaggerate others. To say that some circumstances in an affidavit are improbable or false, is very different from saying that the whole is forged. I suspect the former to be the case here; but I see no appearance of the latter. Be that as it will, some of the most material facts in Paris's affidavit rest upon his single testimony; and for that reason, I have not in the history, nor shall I in this place, lay any stress upon them.

2. The letters said to be written by Mary to Bothwell. These have been frequently published. The accident by which the queen's enemies got them into their possession, is related in Book V. When the authenticity of any ancient paper is dubious or contested, it may be ascertained either by external or internal evidence. Both these have been produced in the present case.

I. External proofs of the genuineness of Mary's let-1. Murray, and the nobles who adhered to him, affirm upon their word and honour, that the letters were written with the queen's own hand, with which they were well acquainted. Good. ii. 64. 92. 2. The letters were publicly produced in the parliament of Scotland, December 1567; and were so far considered as genuine, that they are mentioned in the act against Mary, as one chief argument of her guilt. Good. ii. 66. 67. 3. They were shewn privately to the duke of Norfolk, the earl of Sussex, and Sir Ralph Sadler, Elizabeth's commissioners at York. In the account which they gave of this matter to their mistress, they seem to consider the letters as genuine, and express no suspicion of any forgery; they particularly observe, "that the matter contained in them is such, that it could hardly be invented and devised by any other than herself; for that they discourse of some things, which were unknown to any other than to herself and Bothwell; and as it is hard to counterfeit so many, so the matter of them, and the manner how these men came by them is such, as it seemeth that God, in whose sight murder and bloodshed of the innocent is abominable, would not permit the same to be hid or concealed." Good. ii. 142. They

seem to have made such an impression on the duke of Norfolk, that in a subsequent letter to Pembroke, Leicester, and Cecil, he has these words: & If the matter shall be thought as detestable and manifest to you, as for ought we can perceive it seemeth here to us." Good, ii. 154. Nor did Norfolk declare these to be his sentiments only in public official letters, he expressed himself in the same manner to his most confidential friends. In a secret conference with the bishop of Ross at York, the duke informed him, that he had seen the letters, &c. which the regent had to produce against the queen, whereby there would be such matter proved against her, as would dishonour her for ever. State Trials, edition of Hargrave, i. 91. Murdin, 52. The bishop of Ross, if he had known the letters to be a notorious forgery, must have been naturally led, in consequence of this declaration, to undeceive the duke, and to expose the imposture. But, instead of this, the duke, and he, and Lethington, after consulting together, agreed, that the bishop should write to Mary, then at Bolton, and instruct her to make such a proposal to Elizabeth, as might prevent the public production of the letters and other evidence. State Trials, i. 94. Murdin, 45, Indeed, the whole of this secret conference seems to imply, that Lethington, Ross, and Norfolk, were conscious of some defect in Mary's cause, and therefore exerted all their ingenuity in order to avoid a public accusation. Murdin, 52, 53. To Banister, whom the duke seems to have trusted more entirely than any other of his servants, he expressed himself in similar terms with respect to the queen of Scots. State Trials, i. 98. The words of Banister's evidence are remarkable: "I confess that I, waiting of my lord and master, when the earl of Sussex and Mr. Chancellor of the duchy that now is, were in commission at York, did hear his grace say, that upon examination of the matter of the murder, it did appear that the queen of Scots was guilty and privy to the murder of lord Darnley, whereby I verily thought that his grace would never join in marriage with her." Mur-

din. 134. Elizabeth, in her instructions to the earl of Shrewsbury and Beale, in 1583, asserts, that both the duke and earl of Arundel did declare to herself, that the proof, by the view of her letters, did fall out sufficient against the queen of Scots; however, they were after drawn to cover her faults and pronounce her innocency. MS. Advoc. Library. A.iii. 28. p. 314. from Cot. Lib. Calig. 9. 4. A similar impression was made upon other contemporaries of Mary by the production of the letters, which implies a full belief of their being genuine. Cecil, in his correspondence with Sir Henry Norris, the English ambassador in France, relates this transaction in terms which leave no room to doubt with respect to his own private opinion. In his letter, Decem. 14th, 1568, the very day on which the letters, &c. were laid before the meeting of privy-counsellors and peers, he informs him, "That the regent was driven, from his defence, to disclose a full fardel of the naughty matter, tending to convince the queen as adviser of the murther, and the earl of Bothwell as her executour; and now the queen's party, so great, refuse to make any answer, and press that their mistress may come in person to answer the matter herself before the queen's majesty, which is thought not fit to be granted until the great blot of the marriage with her husband's murtherer, and the evident charges, by letters of her own, to be deviser of the murther, be somewhat razed out or recovered; for that as the matters are exhibited against her, it is far unseemly for any prince, or for chaste ears. to be annoyed with the filthy noise thereof; and yet, as being a commissioner, I must and will forbear to pronounce any thing herein certainly, though as a private person I cannot but with horrour and trembling think thereof." Cabala, 156. 5. From the correspondence of Bowes, the English resident in Scotland, with Walsingham, in the year 1582, published towards the close of this dissertation, it is manifest that both in England and Scotland, both by Elizabeth and James, both by the duke of Lennox and earl of Gowrie, the letters

were deemed to be genuine. The eagerness on one side to obtain, and on the other to keep, possession of the casket and letters, implies that this was the belief of both. These sentiments, of contemporaries, who were in a situation to be thoroughly informed, and who had abilities to judge with discernment, will, in the opinion of many of my readers, far outweigh theories, suppositions, and conjectures, formed at the distance of two centuries. 6. The letters were subjected to a solemn and judicial examination with respect to their authenticity, as far as that could be ascertained by resemblance of character and fashion of writing: for, after the conferences at York and Westminster were finished, Elizabeth, as I have related, assembled her privy-counsellors, and joining to them several of the most eminent noblemen in her kingdom, laid before them all the proceedings against the Scottish queen, and particularly ordered, that "the letters and writings exhibited by the regent, as the queen of Scots' letters and writings, should also be shewed, and conference [i. e. comparison] thereof made in their sight, with the letters of the said queen's, being extant, and heretofore written with her own hand, and sent to the queen's majesty; whereby may be searched and examined what difference is betwixt them." Good. ii. 252. They assembled accordingly, at Hampton-court, December 14 and 15, 1568; and, " The originals of the letters supposed to be written with the queen of Scots' own hand, were then also presently produced and perused; and, being read, were duly conferred and compared, for the manner of writing, and fashion of orthography, with sundry other letters long since heretofore written, and sent by the said queen of Scots to the queen's majesty. In collation whereof no difference was found." Good. ii. 256. 7. Mary having written an apologetical letter<sup>b</sup>

b Mary's letter has never been published, and ought to have a place here, where evidence on all sides is fairly produced. "Madam, if the wrang and false reportis of rebellis, enemies weill knawin for traitouis to zow, and alace to muche trusted of me by zoure advice, had not so far sturred you aganis my innocency (and I must

for her conduct to the countess of Lennox, July 10. 1570, she transmitted it to her husband then in Scotland; and he returned to the countess the following answer: "Seeing you have remittit to me, to answer the Queen the King's mother's letters sent to you, what can I say but that I do not marvell to see hir writ the best can for hirself, to seame to purge her of that, guhairof many besyde me are certainly persuadit of the contrary, and I not only assurit by my awin knawledge. but by her handwrit, the confessionis of men gone to the death, and uther infallibil experience. It will be lang tyme that is hable to put a mattir so notorious in oblivioun, to mak black quhyte, or innocency to appear quhair the contrary is sa weill knawin. The maist indifferent, I trust, doubtis not of the equitie of zoure and my cause, and of the just occasioun of our mislyking. Hir richt dewtie to zow and me, being the parteis interest, were hir trew confessioun and un-

say aganis all kyndness, that zow have not onelie as it were condempnit me wrangfullie, bot so hated me, as some wordis and open deideis hes testifeit to all the warlde, a manyfest mislyking in zow aganis zowr awn blude), I wold not have omittit thus lang my dewtie in wryting to zow excusing me of those untrew reporties made of me. But hoping with Godis grace and tyme to have my innocency knawin to zow, as I trust it is already to the maist pairt of all indifferent personis, I thouht it best not to trouble zow for a tyme till that such a matter is moved that tuichis us bayth, quhilk is the transporting zoure littil son, and my onelie child in this contrey. To the quhilk albeit I be never sa willing, I wald be glaid to have zoure advyse therein, as in all uther thingis tuiching him. I have born him, and God knawis with quhat daunger to him and me boith; and of zow he is descendit. So I meane not to forzet my dewtie to zow, in schewin herein any unkyndness to zow, how unkyndlie that ever ze have delt with me, bot will love zow as my awnt, and respect zow as my moder in law. And gif ye ples to knaw farther of my mynde in that and all uther thingis betwixt us, my ambassador the Bishop of Ross sall be ready to confer with zow. And so after my hairtlie commendationis, remitting me to my saide ambassador, and nour better consideratioun, I commit zow to the protection of Almyghty God, quhom I pray to preserve zow and my brother Charles, and caus zow to knaw my pairt better nor ze do. From Chatisworth this x of July 1570.

To my Ladie Lennox my moder in law. Your natural gude Nice and lovynge dochter."

fevned repentance of that lamentable fact, odious for hir to be reportit, and sorrowfull for us to think of, God is just, and will not in the end be abused; but as he has manifested the truth, so will he puneise the iniquity." Lennox's Orig. Regist. of Letters. their public papers, the queen's enemies may be suspected of advancing what would be most subservient to their cause, not what was agreeable to truth, or what flowed from their own inward conviction. in a private letter to his own wife, Lennox had no occasion to dissemble; and it is plain, that he not only thought the queen guilty, but believed the authenticity of her letters to Bothwell. 8. In opposition to all these reasons for believing the letters, &c. to be authentic, the conduct of the nobles confederated against Mary, in not producing them directly as evidence against her, has been represented as an irrefragable proof of their being forged. According to the account of the confederates themselves, the casket containing the letters was seized by them on the 20th of June, 1567; but the first time that they were judicially stated as evidence against the queen was in a meeting of the regent's privy-council, December 4th, and they afterward served as the foundation of the acts made against her in the parliament held on the 15th of the same month. If the letters had been genuine, it is contended, that the obtaining possession of them must have afforded such matter of triumph to the confederates, that they would instantly have proclaimed it to the whole world; and in their negotiations with the English and French ministers, or with such of their fellow-subjects as condemned their proceedings, they would have silenced, at once, every advocate for the queen, by exhibiting this convincing proof of her guilt. But in this reasoning sufficient attention is not paid to the delicate and perilous situation of the confederates at that juncture. They had taken arms against their sovereign, had seized her person at Carberry-hill, and had confined her a prisoner at Lochlevin. A considerable number, however, of their fellowsubjects, headed by some of the most powerful noblemen in the kingdom, was combined against them. This combination, they soon perceived, they could not hope to break or to vanquish without aid either from France or England. In the former kingdom, Mary's uncles, the duke of Guise and cardinal of Lorrain, were, at that period, all-powerful, and the king himself was devotedly attached to her. If the confederates confined their views to the dissolution of the marriage of the queen with Bothwell, and to the exclusion of him for ever from her presence, they might hope, perhaps, to be countenanced by Charles IX. and his ministers, who had sent an envoy into Scotland of purpose to dissuade Mary from that ill-fated match; App. No. XXII.; whereas the loading her publicly with the imputation of being accessary to the murder of her husband, would be deemed such an inexpiable crime by the court of France, as must cut off every hope of countenance or aid from that quarter. From England, with which the principal confederates had been long and intimately connected, they had many reasons to expect more effectual support; but to their astonishment, Elizabeth condemned their proceedings with asperity, warmly espoused the cause of the captive queen, and was extremely solicitous to obtain her release and restoration. Nor was this merely the only one of the artifices which Elizabeth often employed in her transactions with Scotland. Though her most sagacious ministers considered it as the wisest policy to support the confederate lords rather than the queen of Scots, Elizabeth disregarded their counsel.c Her high

c This was the opinion of Throkmorton, as appears from an extract of his letter of July 11th, published in the App. No. XXII. The same were the sentiments of Cecil, in his letter of Aug. 19th, 1565, to Sir Henry Norris, Elizabeth's ambassador to France: "You shall perceive," says he, "by the queen's letter to you, at this present, how earnestly she is bent in favour of the queen of Scots, and truly since the beginning she hath been greatly offended with the lords; and, howsoever her majesty might make her profit by bear-

notions of royal authority, and of the submission due by subjects, induced her, on this occasion, to exert herself in behalf of Mary, not only with sincerity but with zeal; she negotiated, she solicited, she threatened. Finding the confederates inflexible, she endeavoured to procure Mary's release by means of that party in Scotland which continued faithful to her, and instructed Throkmorton to correspond with the leaders of it, and to make overtures to that effect. Keith, 451. App. No. XXIII. She even went so far as to direct her ambassador at Paris to concert measures with the French king how they, by their joint efforts, might persuade or compel the Scots to "acknowledge the queen her good sister to be their sovereign lady, and queen, and renounce their obedience to her son." Keith, 462, 3, 4. From all these circumstances, the confederates had every reason to apprehend that Mary would soon obtain liberty, and by some accommodation be restored to the whole, or at least to a considerable portion, of her authority as sovereign. In that event they foresaw, that if they should venture to accuse her publicly of a crime so atrocious as the murder of her husband, they must not only be excluded for ever from power and favour, but from any hope of personal safety. On this account they long confined themselves to that which was originally declared to be the reason of their taking arms; the avenging the king's death, the dissolving the marriage with Bothwell, the inflicting on him condign punishment, or banishing him for ever from the queen's presence. It appears from the letters of Throkmorton, published by bishop Keith, and in my Appendix, that his sagacity early discovered that this would be the tenor of their conduct. In his letter from Edinburgh, dated July

ing with the lords in this action, yet no counsel can stay Her Majesty from manifesting her misliking of them." Cabala, 140. And it his letter of Sept. 3d, "The queen's majesty, our sovereign, remainest still offended with the lords for the queen; the example moveth her." Ib. 141. Digges Comp. Amb. 14.

14th, he observes, that "they do not forget their own peril conjoined with the danger of the prince, but, as far as I perceive, they intend not to touch the queen either in surety or in honour; for they speak of her with respect and reverence, and do affirm, as I do learn, that, the condition aforesaid accomplished [i. e. the separation from Bothwell, they will both put her to liberty, and restore her to her estate." App. No. XXII. His letter of August 22d, contains a declaration made to him by Lethington, in name and in presence of his associates, "that they never meant harm neither to the queen's person nor to her honour; that they have been contented hitherto to be condemned. as it were, of all princes, strangers, and, namely, of the queen of England, being charged of grievous and infamous titles, as to be noted rebels, traitors, seditious, ingrate, and cruel, all which they suffer and bear upon their backs, because they will not justify themselves, por proceed in any thing that may touch their sovereign's honour. But in case they be with these defamations continually oppressed, or with the force, aid, and practices of other princes, and namely of the queen of England, put in danger, or to an extremity, they shall be compelled to deal otherwise with the queen than they intend, or than they desire; for, added he, you may be sure we will not lose our lives, have our lands forfeited, and be reputed rebels through the world, seeing we have the means to justify ourselves." Keith, 448. From this view of the slippery ground on which they stood at that time, their conduct in not producing the letters for several months, appears not only to have been prudent, but essential to their own safety.

But, at a subsequent period, when the confederates found it necessary to have the form of government, which they had established, confirmed by authority of parliament, a different mode of proceeding became requisite. All that had hitherto been done with respect to the queen's dismission, the seating the young king

supon the throne, and the appointment of a regent, was in reality nothing more than the deed of private men. It required the exhibition of some legal evidence to procure a constitutional act giving the sanction of its approbation to such violent measures, and to obtain "a perfect law and security for all them that either by deed, counsel, or subscription, had entered into that cause since the beginning." Hayles, 453. This prevailed with the regent and his secret council, after long deliberation, to agree to produce all the evidence of which they were possessed; and upon that production parliament passed the acts which were required. Such a change had happened in the state of the kingdom as induced the confederates to venture upon this change in their conduct. In June, a powerful combination was forming against them, under the leading of the Hamiltons. In December, that combination was broken; most of the members of it had acknowledged the king as their lawful sovereign, and had submitted to the regent's government. Huntly, Argyll, Herries, the most powerful noblemen of that party, were present in the parliament, and concurred in all its acts. Edinburgh, Dunbar, Dumbarton, and all the chief strongholds in the kingdom were now in the hands of the regent; the arms of France had full occupation in its civil war with the Hugonots. The ardour of Elizabeth's zeal in behalf of the captive queen seems to have abated. A step that would have been followed with ruin to the confederates in June, was attended with little danger in December. From this long deduction it appears, that no proof of the letters being forged can be drawn from the circumstance of their not having been produced immediately after the twentieth of June; but though no public accusation was brought instantly against the queen, in consequence of seizing the casket, hints were given by the confederates, that they possessed evidence sufficient to convict her. This is plainly implied in a letter of Throkmorton, July 21st; Keith, Pref. p. xii. and more clearly in the passage

which I have quoted from his letter of August 22. In his letter of July 25, the papers contained in the casket are still more plainly pointed out. "They [i. e. the confederates] say, that they have as apparent proof against her as may be, as well by the testimony of her own hand-writing, which they have recovered, as also by sufficient witnesses." Keith, 426.

II. With regard to the internal proofs of the genuineness of the queen's letters to Bothwell, we may observe, 1. That whenever a paper is forged with a particular intention, the eagerness of the forger to establish the point in view, his solicitude to cut off all doubts and cavils, and to avoid any appearance of uncertainty, seldom fail of prompting him to use expressions the most explicit and full to his purpose. The passages foisted into ancient authors by heretics in dif ferent ages; the legendary miracles of the Romish saints; the suppositious deeds in their own favour produced by monasteries; the false charters of homage mentioned Vol. I. p. 87, are so many proofs of this assertion. No maxim seems to be more certain than this, that a forger is often apt to prove too much, but seldom falls into the error of proving too little. point which the queen's enemies had to establish was. "that as the earl of Bothwell was chief executor of the horrible and unworthy murder perpetrated, &c. so was she of the foreknowledge, council, devise, persuader, and commander of the said murder to be done." Good, ii. 207. But of this there are only imperfect hints, obscure intimations, and dark expressions in the letters, which, however convincing evidence they might furnish if found in real letters, bear no resemblance to that glare and superfluity of evidence which forgeries commonly contain. All the advocates for Mary's innocence in her own age, contend that there is nothing in the letters which can serve as a proof of her guilt. Lesly, Blackwood, Turner, &c. abound with passages to this purpose; nor are the sentiments of those in the present age different. "Yet still it might have been

expected (says one of her ablest defenders) that some one or other of the points or articles of the accusation should be made out clearly by the proof. But nothing of that is to be seen in the present case. There is nothing in the letters that could plainly shew the writer to have been in the foreknowledge, counsel, or device of any murder, far less to have persuaded or commanded it; and as little is there about maintaining or justifying any murders." Good. i. 76. How ill advised were Mary's adversaries, to contract so much guilt, and to practise so many artifices, in order to forge letters, which are so ill contrived for establishing the conclusion they had in view! Had they been so base as to have recourse to forgery, is it not natural to think that they would have produced something more explicit and decisive? 2. It is almost impossible to invent a long narration of fictitious events, consisting of various minute particulars, and to connect these in such a manner with real facts, that no mark of fraud shall appear. For this reason, skilful forgers avoid any long detail of circumstances, especially of foreign and superfluous ones, well knowing that the more these are multiplied, the more are the chances of detection increased. Now Mary's letters, especially the first, are filled with a multiplicity of circumstances, extremely natural in a real correspondence, but altogether foreign to the purpose of the queen's enemies, and which it would have been extreme folly to have inserted, if they had been altogether imaginary, and without foundation. 3. The truth and reality of several circumstances in the letters, and these, too, of no very public nature, are confirmed by undoubted collateral evidence. Lett. i. Good. ii. p. 1. The queen is said to have met one of Lennox's gentlemen, and to have had some conversation with him. Thomas Crawford, who was the person, appeared before Elizabeth's commissioners, and confirmed, upon oath, the truth of this circumstance. He likewise declared, that during the queen's stay at Glasgow, the king repeated to him, every night,

whatever had passed through the day, between her majesty and him; and that the account given of these conversations in the first letter, is nearly the same with what the king communicated to him. Good. ii. 245 According to the same letter there was much discourse between the king and queen concerning Mynto, Hiegait, and Walcar. Good. ii. 8. 10, 11. What this might be, was altogether unknown, until a letter of Mary's, preserved in the Scottish college at Paris; and published. Keith, Pref. vii. discovered it to be an affair of so much importance as merited all the attention she paid to it at that time. It appears by a letter from the French ambassador, that Mary was subject to a violent pain in her side. Keith, ibid. This circumstance is mentioned, Lett. i. p. 30, in a manner so natural as can scarcely belong to any but a genuine production. 4. If we shall still think it probable to suppose that so many real circumstances were artfully introduced into the letters by the forgers, in order to give an air of authenticity to their production; it will hardly be possible to hold the same opinion concerning the following particular. Before the queen began her first letter to Bothwell, she, as usual among those who write long letters containing a variety of subjects, made notes or memorandums of the particulars she wished to remember; but as she sat up writing during a great part of the night, and after her attendants were asleep, her paper failed her, and she continued her letter upon the same sheet on which she had formerly made her memorandums. This she herself takes notice of, and makes an apology for it: "It is late; I desire never to cease from writing unto you, yet now, after the kissing of your hands, I will end my letter. Excuse my evil writing, and read it twice over. Excuse that thing that is scriblit, for I had na paper zesterday, quhen I wraite that of the memorial." Good. ii. 28. These memorandums still appear in the middle of the letter; and what we have said seems naturally to account for the manner how they might find their way into a real letter. It is scarce to be supposed, however, that any forger would think of placing memorandums in the middle of a letter, where, at first sight, they make so absurd and so unnatural an appearance. But if any shall still carry their refinement to such a length, as to suppose that the forgers were so artful as to throw in this circumstance, in order to preserve the appearance of genuineness, they must at least allow that the queen's enemies, who employed these forgers, could not be ignorant of the design and meaning of these short notes and memorandums; but we find them mistaking them so far as to imagine that they were the credit of the bearer, i. e. points concerning which the queen had given him verbal instructions. Good. ii. 152. This they cannot possibly be; for the queen herself writes with so much exactness concerning the different points in the memorandums, that there was no need of giving any credit or instructions to the bearer concerning them. The memorandums are indeed the contents 5. Mary, mentioning her conversation of the letter. with the king, about the affair of Mynto, Hiegait, &c. says, "The morne [i. e. to-morrow] I will speik to him upon that point;" and then adds, "As to the rest of Willie Hiegait's, he confessit it; but it was the morne [i. e. the morning] after my coming or he did it." Good. ii. 9. This addition, which could not have been made till after the conversation happened, seems either to have been inserted by the queen into the body of the letter, or, perhaps, she having written it on the margin, it was taken thence into the text. If we suppose the letter to be a real one, and written at different times, as it plainly bears, this circumstance appears to be very natural: but no reason could have induced a forger to have ventured upon such an anachronism, for which there was no necessity. An addition perfectly similar to this made to a genuine paper, may be found, Good. ii. 282.

But, on the other hand, Mary herself, and the advocates for her innocence, have contended, that these

letters were forged by her enemies, on purpose to blast her reputation, and to justify their own rebellion. It is not necessary to take notice of the arguments which were produced in her own age in support of this opinion; the observations which we have already made, contain a full reply to them. An author, who has inquired into the affairs of that period with great industry, and who has acquired much knowledge of them, has published (as he affirms) a demonstration of the forgery of Mary's letters. This demonstration he founds upon evidence both internal and external. gard to the former, he observes that the French copy of the queen's letters is plainly a translation of Buchanan's Latin copy; which Latin copy is only a translation of the Scottish copy; and, by consequence, the assertion of the queen's enemies, that she wrote them originally in French, is altogether groundless, and the whole letters are gross forgeries. He accounts for this strange succession of translations, by supposing that when the forgery was projected, no person could be found capable of writing originally in the French language letters which would pass for the queen's; for that reason they were first composed in Scottish; but unluckily the French interpreter, as he conjectures, did not understand that language; and therefore Buchanan translated them into Latin, and from his Latin they were rendered into French. Good. i. 79, 80.

It is hardly necessary to observe, that no proof whatever is produced of any of these suppositions. The manner of the Scots in that age, when almost every man of rank spent a part of his youth in France, and the intercourse between the two nations was great, renders it altogether improbable that so many complicated operations should be necessary in order to procure a few letters to be written in the French language.

But without insisting farther on this, we may observe, that all this author's premises may be granted, and yet his conclusion will not follow, unless he likewise prove that the French letters, as we now have them, are a

true copy of those which were produced by Murray and his party in the Scottish parliament, and at York and Westminster. But this he has not attempted; and if we attend to the history of the letters, such an attempt, it is obvious, must have been unsuccessful. The letters were first published at the end of Buchanan's Detection. The first edition of this treatise was in Latin, in which language three of the queen's letters were subjoined to it; this Latin edition was printed A. D. 1571. Soon after, a Scottish translation of it was published, and at the end of it were printed, likewise in Scottish, the three letters which had formerly appeared in Latin, and five other letters in Scottish. which were not in the Latin edition. Next appeared a French translation of the Detection, and of seven of the letters; this bears to have been printed at Edinburgh by Thomas Waltem, 1572. The name of the place, as well as the printer, is allowed by all parties to be a manifest imposture. Our author, from observing the day of the month from which the printing is said to have been finished, has asserted that this edition was printed at London; but no stress can be laid upon a date found in a book, where every other circumstance with regard to the printing is allowed to be false. Blackwood, who (next to Lesly) was the best informed of all Mary's advocates in that age, affirms, that the French edition of the Detection was published in France: "Il [Buchanan] a depuis adjousté a ceste declamation un petit libelle du pretendu marriage du Duc de Norfolk, et de la façon de son proces, et la tout envoyé aux freres a la Rochelle, lesquels voyants qu'il pouvoit servir a la cause, l'ont traduit en Francois, et iceluy fut imprimée a Edinbourg, c'est a dire a la Rochelle, par Thomas Waltem, nom aposté et fait a plaisir. Martyre de Marie. Jebb, ii. 256." The author of the Innocence de Marie goes farther, and names the French translator of the Detection. premierement composé (comme il semble) par George Buchanan Escossoys, et depuis traduit en langue

Françoise par un Hugonot, Poitevin (advocat de vocation) Camuz, soy disant gentilhomme, et un de plus remarquez sediteuz de France. Jebb, i. 425. 443." The concurring testimony of two contemporary authors, whose residence in France afforded them sufficient means of information, must outweigh a slight conjecture. The French translator does not pretend to publish the original French letters as written by the queen herself; he expressly declares that he translated them from the Latin. Good. i. 103. Had our author attended to all these circumstances, he might have saved himself the labour of so many criticisms to prove that the present French copy of the letters is a translation from the Latin. The French editor himself acknowledges it, and, so far as I know, no person ever denied it.

We may observe that the French translator was so ignorant as to affirm that Mary had written these letters, partly in French, partly in Scottish. Good. i. 103. Had this translation been published in London by Cecil, or had it been made by his direction, so gross an error would not have been admitted into it. This error, however, was owing to an odd circumstance. In the Scottish translation of the Detection, two or three sentences of the original French were prefixed to each letter, which breaking off with an &c., the Scottish translation of the whole letter followed. This method of printing translations was not uncommon in that age. The French editor observing this, foolishly concluded that the letters had been written partly in French, partly in Scottish.

If we carefully consider those few French sentences of each letter, which still remain, and apply to them that species of criticism, by which our author has examined the whole, a clear proof will arise, that there was a French copy not translated from the Latin, but which was itself the original from which both the Latin and Scottish have been translated. This minute criticism must necessarily be disagreeable to many readers; but luckily a few sentences only are to be examined which will reader it extremely what

mined, which will render it extremely short.

In the first letter, the French sentence prefixed to it. ends with these words, y faisoit bon. It is plain this expression, veu ce que peut un corps sans cœur, is by no means a translation of cum plane perinde assem atque corpus sine corde. The whole sentence has a spirit and elegance in the French, which neither the Latin nor Scottish have retained. Jusques a la dinée is not a translation of toto prandii tempore; the Scottish translation, guhile denner-time, expresses the sense of the French more properly; for anciently quhite signified until as well as during. Je n'ay pas tenu grand propos is not justly rendered neque contulerim sermonem cum quoquam; the phrase used in the French copy is one peculiar to that language, and gives a more probable account of her behaviour than the other. Jugeant bien qu'il n'y faisoit bon is not a translation of ut qui judicarent id non esse ex usu. The French sentence prefixed to lett. 2. ends with apprendre. It is evident that both the Latin and Scottish translations have omitted altogether these words, et toutefois je ne puis apprendie. The French sentence prefixed to lett. 3. ends with presenter. J'ave veille plus tard la haut is plainly no translation of diutius illic morata sum: the sense of the French is better expressed by the Scottish, I have walkit later there up. Again, Pour excuser vostre affaire is very different from ad excusandam nostra negotia. The five remaining letters never appeared in Latin; nor is there any proof of their being ever translated into that language. Four of them, however, are published in French. This entirely overturns our author's hypothesis concerning the necessity of a translation into Latin.

In the Scottish edition of the Detection, the whole sonnet is printed in French as well as in Scottish. It is not possible to believe that this Scottish copy could be the original from which the French was translated. The French consists of verses which have both measure and rhyme, and which, in many places, are far from being inelegant. The Scottish consists of an equal number of lines, but without measure or rhyme. Now

no man could ever think of a thing so absurd and impracticable, as to require one to translate a certain given number of lines in prose, into an equal number of verses, where both measure and rhyme were to be observed. The Scottish, on the contrary, appears manifestly to be a translation of the French; the phrases, the idioms, and many of the words are French, and Besides the Scottish translator has, in not Scottish. several instances, mistaken the sense of the French, and in many more expressions the sense imperfectly. Had the sonnet been forged, this could not have happened. The directors of the fraud would have understood their own work. I shall satisfy myself with one example, in which there is a proof of both my assertions. Stanza viii. ver. 9.

Pour luy j'attendz toute bonne fortune, Pour luy je veux garder santè et vie, Pour luy tout vertu de suivre j'ay envie.

For him I attend all good fortune, For him I will conserve helthe and life, For him I desire to ensue courage.

Attend in the first line is not a Scottish, but a French phrase; the two other lines do not express the sense of the French, and the last is absolute nonsense.

The eighth letter was never translated into French. It contains much refined mysticism about devices, a folly of that age, of which Mary was very fond, as appears from several other circumstances, particularly from a letter concerning impresas by Drummond of Hawthornden. If Mary's adversaries forged her letters, they were certainly employed very idly when they produced this.

From these observations it seems to be evident that there was a French copy of Mary's letters, of which the Latin and Scottish were only translations. Nothing now remains of this copy but those few sentences which are prefixed to the Scottish translation. The French

editor laid hold of these sentences, and tacked his own translation to them, which, so far as it is his work, is a servile and a very wretched translation of Buchanan's Latin; whereas, in those introductory sentences, we have discovered strong marks of their being originals, and certain proofs that they are not translated from the Latin.

It is apparent, too, from comparing the Latin and Scottish translations with these sentences, that the Scottish translator has more perfectly attained the sense and spirit of the French than the Latin. And as it appears, that the letters were very early translated into Scottish, Good. ii. 76. it is probable that Buchanan made his translation, not from the French, but from the Scottish copy. Were it necessary, several critical proofs of this might be produced. One that has been already mentioned seems decisive. Diutius illic morata sum bears not the least resemblance to j'av veillé plus tard la haut; but if, instead of I walkit si. e. watched] laiter there up, we suppose that Buchanan read I waitit, &c. this mistake, into which he might so easily have fallen, accounts for the error in his translation.

These criticisms, however minute, appear to be well-founded. But whatever opinion may be formed concerning them, the other arguments, with regard to the internal evidence, remain in full force.

The external proofs of the forgery of the queen's letters, which our author has produced, appear at first sight to be specious, but are not more solid than that which we have already examined. These proofs may be classed under two heads. 1. The erroneous and contradictory accounts which are said to be given of the letters upon the first judicial production of them. In the secret council held Decem. 4. 1567, they are described "as her privie letters written and subscrivit with her awin hand." Haynes, 454. Good. ii. 64. In the act of parliament, passed on the 15th of the same month, they are described as "her privie letters

written halelie with her awin hand." Good. ib. 67. This diversity of description has been considered as a strong presumption of forgery. The manner in which Mr. Hume accounts for this is natural and plausible, vol. v. p. 498. And several ingenious remarks, tending to confirm his observations, are made in a pamphlet lately published, entitled, Miscellaneous Remarks on the Enquiry into the Evidence against Mary Queen of Scots. To what they have observed it may be added, that the original act of secret council does not now exist; we have only a copy of it found among Cecil's papers, and the transcriber has been manifestly so ignorant, or so careless, that an argument founded entirely upon the supposition of his accuracy is of little force. Several errors into which he has fallen, we are enabled to point out, by comparing his copy of the act of secret council with the act of parliament passed in consequence of it. The former contains a petition to parliament; in the latter the real petition is resumed verbatim, and converted into a law. In the copy, the queen's marriage with Bothwell is called "a priveit marriage," which it certainly was not; for it was celebrated, after proclamation of banns, in St. Giles's church for three several days, and with public solemnity; but in the act it is denominated " ane pretendit marriage," which is the proper description of it, according to the ideas of the party. In the copy, the queen is said to be "so thrall and bludy affectionat to the privat appetite of that tyran," which is nonsense, but in the act it is "blindly affectionat." In the copy it is said, " all nobill and virtuous men abhorring their traine and company." In the act, "their tyrannie and companie," which is evidently the true reading, as the other has either no meaning, or is a mere tautology. 2. The other proof of the forgery of the letters, is founded upon the impossibility of reconciling the account, given of the time when, and the places from which, the letters are supposed to have been written, with what is certainly known concerning the queen's motions. According to the paper published. Anders. ii. 269. which has been called Murray's Diary, and which is formed upon the authority of the letters, Mary set out from Edinburgh to Glasgow. January 21, 1567; she arrived there on the 23d; left that place on the 27th; she, together with the king, reached Linlithgow on the 28th, stayed in that town only one night, and returned to Edinburgh before the end of the month. But, according to Mr. Goodall, the queen did not leave Edinburgh until Friday Jan. 24th; as she stayed a night at Callendar, she could not reach Glasgow sooner than the evening of Saturday the 25th, and she returned to Linlithgow on Tuesday the 28th. By consequence, the first letter, which supposes the queen to have been at least four days in Glasgow, as well as the second letter which bears date at Glasgow, Saturday morning, whereas she did not arrive there until the evening, must be forgeries. That the queen did not set out from Edinburgh sooner than the 24th of January, is evident (as he contends) from the public records, which contain a Precept of a confirmation of a life-rent by James Boyd to Margaret Chalmers, granted by the queen, on the 24th of January, at Edinburgh; and likewise a letter of the queen's, dated at Edinburgh on the same day, appointing James Inglis tailor to the prince her son. That the king and queen had returned to Linlithgow on the 28th, appears from a deed, in which they appoint Andrew Ferrier keeper of their palace there, dated at Linlithgow, January 28. Good. i. 118.

This has been represented to be not only a convincing, but a legal proof of the forgery of the letters said to be written by Mary; but how far it falls short of this, will appear from the following considerations:

1. It is evident from a declaration or confession made by the bishop of Ross, that before the conferences at York, which were opened in the beginning of October, 1568, Mary had, by an artifice of Maitland's, got into her hands a copy of those letters which her subjects accused her of having written to Bothwell.

Brown's Trial of the Duke of Norfolk, 31. 36. It is highly probable that the bishop of Ross had seen the letters before he wrote the defence of queen Mary's honour, in the year 1570. They were published to all the world, together with Buchanan's Detection, A. D. 1571. Now, if they had contained an error so gross, and, at that time, so obvious to discovery, as the supposing the queen to have passed several days at Glasgow, while she was really at Edinburgh; had they contained a letter dated at Glasgow, Saturday morning, though she did not arrive there till the evening; is it possible that she herself, who knew her own motions, or the able and zealous advocates who appeared for her in that age, should not have published and exposed this contradiction, and, by so doing, have blasted at once the credit of such an imposture? In disquisitions which are naturally abstruse and intricate, the ingenuity of the latest author may discover many things which have escaped the attention, or baffled the sagacity of those who have formerly considered the same subject. But when a matter of fact lay so obvious to view, this circumstance of its being unobserved by the queen herself, or by any of her adherents, is almost a demonstration that there is some mistake or fallacy in our author's arguments. So far are any, either of our historians or of Mary's defenders, from calling in question the common account concerning the time of the queen's setting out to Glasgow, and her returning from it, that there is not the least appearance of any difference among them with regard to this point. But farther,

2. Those papers in the public records, on which our author rests the proof of his assertion concerning the queen's motions, are not the originals subscribed by the queen, but copies only, or translations of copies of those originals. It is not necessary, nor would it be very easy, to render this intelligible to persons unacquainted with the forms of law in Scotland; but every Scotsman conversant in business will understand me

when I say that the precept of confirmation of the liferent to Boyd is only a Latin copy or note of a precept, which was sealed with the privy seal, on a warrant from the signet-office, proceeding on a signature which bore date at Edinburgh, the 24th of January; and that the deed in favour of James Inglis is the copy of a letter, sealed with the privy seal, proceeding on a signature which bore date at Edinburgh, January 24. From all this we may argue with some degree of reason, that a proof founded on papers which are so many removes distant from the originals, cannot but be very lame and uncertain.

3. At that time all public papers were issued in the name both of the king and queen; by law, the king's subscription was no less requisite to any paper than the queen's; and therefore, unless the original signatures be produced, in order to ascertain the particular day when each of them signed, or to prove that it was signed only by one of them, the legal proof arising from these papers would be, that both the king and queen signed them at Edinburgh on the 24th of January.

4. The dates of the warrants or precepts issued by the sovereign in that age, seem to have been in a great measure arbitrary, and affixed at the pleasure of the writer; and of consequence, these dates were seldom accurate, are often false, and can never be relied upon. This abuse became so frequent, and was found to be so pernicious, that an act of parliament, A. D. 1592, declared the fixing a false date to a signature to be

high treason.

5. There still remain, in the public records, a great number of papers, which prove the necessity of this law, as well as the fallacy of our author's arguments. And though it be no easy matter, at the distance of two centuries, to prove any particular date to be false, yet surprising instances of this kind shall be produced. Nothing is more certain from history, than that the king was at Glasgow 24th January, 1567; and yet the record of signatures from 1565 to 1582, fol. 16th, contains a copy of a signature to Archibald Edmonston, said to have been subscribed by our sovereigns, i.e. the king and queen, at Edinburgh, January 24, 1567; so that if we were to rely implicitly upon the dates in the records of that age, or to hold our author's argument to be good, it would prove that not only the queen, but the king too was at Edinburgh on the 24th of January.

It appears from an original letter of the bishop of Ross, that on the 25th of October, 1566, Mary lay at the point of death; Keith, App. 134.; and yet a deed is to be found in the public records, which bears that it was signed by the queen that day. Privy seal, lib.

35. fol. 89. Ouchterlony.d

Bothwell seized the queen as she returned from Stirling, April 24, 1567, and (according to her own account) conducted her to Dunbar with all diligence. And. i. 95. But our author, relying on the dates of some papers which he found in the records, supposes that Bothwell allowed her to stop at Edinburgh, and to transact business there. Nothing can be more improbable than this supposition. We may therefore rank the date of the deed to Wright, Privy seal, lib. 36. fol. 43. and which is mentioned by our author, vol. i. 124. among the instances of the false dates of papers which were issued in the ordinary course of business in that age. Our author has mistaken the date of the other paper to Forbes, ibid. it is signed April 14th, not April 24th.

If there be any point agreed upon in Mary's history, it is, that she remained at Dunbar, from the time that Bothwell carried her thither, till she returned to Edin-

<sup>d</sup> N. B. In some of the earlier editions of this Dissertation, another instance of the same nature with those which go before and follow was mentioned; but that, as has since been discovered, was founded on a mistake of the person employed to search the records, and is therefore omitted in this edition. The reasoning, however, in the Dissertation, stands still in force, notwithstanding this omission.

burgh along with him in the beginning of May. author himself allows that she resided twelve days there, vol. i. 367. Now though there are deeds in the records which bear that they were signed by the queen at Dunbar during that time, yet there are others which bear that they were signed at Edinburgh; e. g. there is one at Edinburgh, April 27th, Privy seal, lib. 36. fol. 97. There are others said to be signed at Dunbar on that day. Lib. 31. Chart. No. 524. 526. Ib. lib. 32. No. 154. 157. There are some signed at Dunbar, April 28th. Others at Edinburgh, April 30th, lib. 32. Chart. No. 492. Others at Dunbar, May 1st. Id. ibid. No. 158. These different charters suppose the queen to have made so many unknown, improbable, and inconsistent journeys, that they afford the clearest demonstration that the dates in these records ought not to be depended on.

This becomes more evident from the date of the charter said to be signed April 27th, which happened that year to be a Sunday, which was not, at that time, a day of business in Scotland, as appears from the books of sederunt, then kept by the lords of session.

From this short review of our author's proof of the forgery of the letters to Bothwell, it is evident, that his arguments are far from amounting to demonstration.

e The uncertainty of any conclusion formed merely on the date of public papers in that age, especially with respect to the king, is confirmed and illustrated by a discovery which was made lately. Mr. Davidson (to whom I was indebted for much information when I composed this Dissertation thirty-three years ago) has, in the course of his intelligent researches into the antiquities of his country, found an original paper which must appear curious to Scottish antiquaries. Buchanan asserts, that on account of the king's frequent absence, occasioned by his dissipation and love of field-sports, a cachette, or stamp cut in metal, was made, with which his name was affixed to public deeds, as if he had been present. Hist, lib. xvii. p. 343. Edit. Ruddim. Knox relates the same thing, Hist. p. 393. How much this may have divested the king of the consequence which he derived from having his name conjoined with that of the queen in all public deeds, as the affixing of his name was thereby put en-

Another argument against the genuineness of these letters is founded on the style and composition, which are said to be altogether unworthy of the queen, and unlike her real productions. It is plain, both from the great accuracy of composition in most of Marv's letters. and even from her solicitude to write them in a fair hand, that she valued herself on those accomplishments, and was desirous of being esteemed an elegant writer. But when she wrote at any time in a hurry, then many marks of inaccuracy appear. A remarkable instance of this may be found in a paper published, Good. ii. 301. Mary's letters to Bothwell were written in the utmost hurry; and yet under all the disadvantages of a translation, they are not destitute either of spirit or of energy. The manner in which she expresses her love to Bothwell has been pronounced indecent and even shocking. But Mary's temper led her to warm expressions of her regard; those refinements of delicacy, which now appear in all the commerce between the sexes, were, in that age, but little known, even among persons of the highest rank. Among the earl of Hardwicke's papers, there is a series of letters, from Mary to the duke of Norfolk, copied from the Harleian library, p. 37. b. 9. fol. 88. in which Mary declares her love to that nobleman in language which would now be reckoned extremely indelicate; Hard. State Papers, i. 189, &c.

Some of Mary's letters to Bothwell were written before the murder of her husband; some of them after that event, and before her marriage to Bothwell. Those

tirely in the power of the person who had the custody of the cachette, is manifest. The keeping of it, as both Buchanan and Knox affirm, was committed to Rizio. A late defender of queen Mary calls in question what they relate, and seems to consider it as one of their aspersions. Goodall, vol. i. p. 238. The truth of their assertion, however, is now fully established by the original deed which I have mentioned. This I have seen and examined with attention. It is now lodged by Mr. Davidson in the signet-office. In it, the subscription of the king's name has evidently been made by a cachette with printer's ink.

which are prior to the death of her husband abound with the fondest expressions of her love to Bothwell. and excite something more than a suspicion that their familiarity had been extremely criminal. We find in them too, some dark expressions, which her enemies employed to prove that she was no stranger to the schemes which were formed against her husband's life. Of this kind are the following passages: " Alace! I never dissavit ony body; but I remit me altogidder to zour will. Send me advertisement quhat I sall do. and quhatsaever thing come thereof, I sall obey zow. Advise to with zourself, gif ze can find out ony mair secret inventioun by medicine, for he suld tak medicine and the bath at Craigmillar." Good. ii. 22. "See not hir quhais fenzeit teiris suld not be sa meikle praisit and estemit, as the trew and faithfull travellis qukilk I sustene for to merit hir place. For obtaining of the quhilk, againis my natural, I betrayis thame that may impesche me. God forgive me," &c. Ibid. 27. "I have walkit later thairup, than I wald have done, gif it had not been to draw something out of him, quhilk this berer will schaw zow, quhilk is the fairest commodity that can be offerit to excuse zour affairs. Ibid. 32. From the letters posterior to the death of her husband. it is evident that the scheme of Bothwell's seizing Mary by force, and carrying her along with him, was contrived in concert with herself, and with her approbation.f

f That letters of so much importance as those of Mary to Bothwell should have been entirely lost, appears to many altogether unaccountable. After being produced in England before Elizabeth's commissioners, they were delivered back by them to the earl of Murray. Good. ii. 235. He seems to have kept them in his possession during life. After his death, they fell into the hands of Lennox his successor, who restored them to the earl of Morton. Good. ii. 91. Though it be not necessarily connected with any of the questions which gave occasion to this Dissertation, it may perhaps satisfy the curiosity of some of my readers to inform them, that, after a very diligent search, which has lately been made, no copy of Mary's letters to Bothwell can be found in any of the public libraries in Great Britain. The only certain intelligence concern

With respect to the sonnets, Sir David Dalrymple has proved clearly, that they must have been written after the murder of the king, and prior to Mary's marriage with Bothwell. But as hardly any part of my

ing them, since the time of their being delivered to Morton, was communicated by the accurate Dr. Birch.

Extract of the letters of Robert Bowes, esq. ambassador from queen Elizabeth to the king of Scotland, written to Sir Francis Walsingham, secretary of state, from the original register book of Mr. Bowes's letters, from 15th of August, 1582, to 28th September, 1583, in the possession of Christopher Hunter, M. D. of Durham.

1582, 8th November, from Edinburgh.

Albeit I have been borne in hand, That the coffer wherein were the originals of letters between the Scottish queen and the earl of Bothwell, had been delivered to sundry hands, and thereby was at present wanting, and unknown where it rested, yet I have learned certainly by the prior of Pluscardyne's means, that both the coffer and also the writings are come, and now remain with the earl of Gowrie, who, I perceive. will be hardly entreated to make delivery to her majesty, according to her majesty's desire.

This time past I have expended in searching where the coffer and writings were, wherein, without the help of the prior, I should have found great difficulty; now I will essay Gowrie, and of my success you shall be shortly advertised.

12th of November, 1582, from Edinburgh.

Because I had both learned, that the casket and letters mentioned in my last, before these were come to the possession of the earl of Gowrie, and also found that no mean might prevail to win the same out of his hands without his own consent and privity; in which behalf I had employed fit instruments, that nevertheless profiting nothing; therefore I attempted to essay himself, letting him know that the said casket and letters should have been brought to her majesty by the offer and good means of good friends, promising to have delivered them to her majesty before they came into his hands and custody, and knowing that he did bear the like affection, and was ready to pleasure her majesty in all things, and chiefly in this that had been thus far tendered to her majesty, and which thereby should be well accepted and with princely thanks and gratuity be requited to his comfort and contentment; I moved him that they might be a present to be sent to her majesty from him, and that I might cause the same to be conveyed to her majesty, adding hereunto such words and arguments as might both stir up a hope of liberality, and also best effect the purpose. At the first he was loth to agree that they were in his possession; but I let him plainly know that I was certainly informed that they were delivered to him by Sanders Jardin; whereupon he pressed to know who did so inform

marrative is founded upon what is contained in the sonnets, and as in this Dissertation I have been constrained to dwell longer upon minute and verbal criticisms, than may be interesting or agreeable to many of my readers,

me, inquiring whether the sons of the earl of Morton had done it, or no. I did not otherwise in plain terms deny or answer thereunto, but that he might think that he had told me as the prior is ready to avouch, and well pleased that I shall give him to be the author thereof; after he had said [though] all these letters were in his keeping (which he would neither grant nor deny), yet he might not deliver them to any person without the consents and privities, as well of the king, that had interest therein, as also of the rest of the noblemen enterprisers of the action against the king's mother, and that would have them kept as an evidence to warrant and make good that action. And albeit I replied, that their action in that part touching the assignation of the crown to the king by his mother, had received such establishment, confirmation, and strength, by acts of parliaments and other public authority and instruments, as neither should that case be suffered to come in debate or question, nor such scrolls and papers ought to be shewed for the strengthening thereof, so as these might well be left and be rendered to the hands of hef majesty, to whom they were destined before they fell in his keeping; yet he would not be removed or satisfied; concluding, after much reasonings, that the earl of Morton, nor any other that had the charge and keeping thereof, durst at any time make delivery; and because it was the first time that I had moved him therein, and that he would gladly both answer her majesty's good expectation in him, and also perform his duty due to his sovereign and associates in the action aforesaid; therefore he would seek out the said casket and letters, at his return to his house, which he thought should be within a short time; and upon finding of the same, and better advice and consideration had of the cause, he would give farther answer. resolution I have received as to the thing; and for the present I could not better, leaving him to give her majesty such testimony of his good will towards her, by his frank dealing herein, as she may have cause to confirm her highnesses good opinion conceived already of him, and be thereby drawn to greater goodness towards him. shall still labour him both by myself and also by all other means; but I greatly distrust the desired success herein.

24th of November, 1582, from Ediuburgh.

For the recovery of the letters in the coffer, come to the bands of the earl of Gowrie, I have lately moved him earnestly therein, letting

him know the purpose of the Scottish queen, both giving out that the letters are counterfeited by her rebels, and also seeking thereon to have them delivered to her or defaced, and that the means which she will make in this behalf shall be so great and effectual, as these

I shall rest satisfied with referring, for information concerning every particular relative to the sonnets, to Remarks on the History of Scotland, Chap. XI.

Having thus stated the proof on both sides; having

writings cannot be safely kept in that realm without dangerous offence of him that hath the custody thereof, neither shall he that is once known to have them be suffered to hold them in his hands. Herewith I have at large opened the perils likely to fall to that action. and the parties therein, and particularly to himself that is now openly known to have the possession of these writings, and I have letten him see what surety it shall bring to the said cause and all the parties therein, and to himself, that these writings may be with secrecy and good order committed to the keeping of her majesty. that will have them ready whensoever any use shall be for them. and by her highnesses countenance defend them and the parties from such wrongful objections as shall be laid against them, offering at length to him, that if he be not fully satisfied herein, or doubt that the rest of the associates shall not like of the delivery of them to her. majesty in this good manner, and for the interest rehearsed that I shall readily, upon meeting and conference with them, procure their assent in this part (a matter more easy to offer than to perform): and lastly, moving him that (for the secrecy and benefit of the cause. and that her majesty's good opinion towards himself may be firmly settled and confirmed by his acceptable forwardness herein) he would, without needless scruple, frankly commit these writings to her majesty's good custody for the good uses received. After long debate he resolved, and said, that he would unfeignedly shew and do to her majesty all the pleasure that he might without offence to the king his sovereign, and prejudice to the associates in the action, and therefore he would first make search and view the said letters. and herein take advice what he might do, and how far he might satisfy and content her majesty; promising thereon to give more resolute answer; and he concluded flatly that after he had found and seen the writings, that he might not make delivery of them without the privity of the king. Albeit I stood along with him against his resolution in this point, to acquaint the king with this matter before the letters were in the hands of her majesty, letting him see that his doings there should admit great danger to the cause; yet I could not remove him from it. It may be that he meaneth to put over the matter from himself to the king, upon sight whereof I shall travel effectually to obtain the king's consent, that the letters may be committed to her majesty's keeping, thinking it more easy to prevail herein with the king, in the present love and affection that he beareth to her highness, than to win any thing at the hands of the associates in the action, whereof some principal of them now come and remain at the devotion of the king's mother; in this I shall still call on

examined at so great a length the different systems with regard to the facts in controversy; it may be expected that I should now pronounce sentence. In my opinion, there are only two conclusions, which can be drawn from the facts which have been enumerated.

One, that Bothwell, prompted by his ambition or love, encouraged by the queen's known aversion to her husband, and presuming on her attachment to himself, struck the blow without having concerted with her the manner or circumstances of perpetrating that crime. That Mary, instead of testifying much indignation at the deed, or discovering any resentment against Bothwell who was accused of having committed it, continued to load him with marks of her regard, conducted his trial in such a manner as rendered it impossible to discover his guilt, and soon after, in opposition to all the maxims of decency or of prudence, voluntarily agreed to a marriage with him, which every consideration should have induced her to detest. By this verdict, Mary is not pronounced guilty of having contrived the

Gowrie, to search out the coffer, according to his promise, and as I shall find him minded to do therein, so shall I do my best and whole endeavour to effect the success to her majesty's best contentment.

2d December, 1582, from Edinburgh.

Because I saw good opportunity offered to renew the matter to the earl of Gowrie for recovery of the letters in the coffer in his hands, therefore I put him in mind thereof; whereupon he told me that the duke of Lennox had sought earnestly to have had those letters, and that the king did know where they were, so as they could not be delivered to her majesty without the king's privity and consent, and he pretended to be still willing to pleasure her majesty in the same, so far as he may with his duty to the king and to the rest of the associates in that action; but I greatly distrust to effect this to her majesty's pleasure, wherein, nevertheless, I shall do my utmost endeavours.

Whether James VI. who put the earl of Gowrie to death, A. D. 1584, and seized all his effects, took care to destroy his mother's letters, for whose honour he was at that time extremely zealous; whether they have perished by some unknown accident; or whether they may not still remain unobserved among the archives of some of our great families, it is impossible to determine.

murder of her husband, or even of having previously given her consent to his death; but she is not acquitted of having discovered her approbation of the deed, by her behaviour towards him who was the author of it.

The other conclusion is that which Murray and his adherents laboured to establish. "That James, sometymme Earl of Bothwile, was the chiefe executor of the horribill and unworthy murder, perpetrat in the person of umquhile King Henry of gude memory, fader to our soveraine lord, and the Queenis lauchfull husband; sa was she of the foreknowledge, counsall, devise, perswadar and command of the said murder to be done." Good, ii. 207.

Which of these conclusions is most agreeable to the evidence that has been produced, I leave my readers to determine.

## APPENDIX.

No. I. (Vol. II. p. 2.)

A Memorial of certain points meet for the restoring the realm of Scotland to the antient weale.

5th August 1559, Cotton. Lib. Cal. B. 10. fol. 17. From a copy in Secretary Cecil's hand. Imprimis, it is to be noted, that the best worldly felicity that Scotland can have, is either to continue in a perpetual peace with the kingdom of England, or to be made one monarchy with England, as they both make but one island, divided from the rest of the world.

If the first is thought, that is, to be in perpetual peace with England, then must it necessarily be provided, that Scotland be not so subject to the appointments of France as is presently, which, being an antient enemy to Eng-

land, seeketh always to make Scotland an instrument, to exercise, thereby, their malice upon England, and to make a footstool thereof to look over England as they may.

Therefore, when Scotland shall come into the hands of a mere Scottish man in blood, then may there be hope of such accord; but as long as it is at the commandment of the French, there is no hope to have accord long betwixt these two realms.

Therefore, seeing it is at the French King's commandment by reason of his wife, it is to be considered for the weale of Scotland, that until she have children, and during her absence out of the realm, the next heirs to the crown, being the house of the Hamiltons, should have regard hereto, and to see that neither the crown be imposed nor wasted; and, on the other side, the nobility and commonalty ought to force that the laws and the old customs of the realm be not altered, neither that the country be not impoverished by taxes, emprest, or new imposts, after the manner of France: for provision wherein, both by the law of God and man, the French King and his wife may be moved to reform their misgovernance of the land.

And for this purpose it were good that the nobility and commons joined with the next heir of the crown, to seek due reformation of such great abuses as tend to the ruin of their country, which must be done before the French grow too

strong and insolent.

First. That it may be provided by the consent of the three estates of the land, that the land may be free from all idolatry like as England is; for justification whereof, if any free general council may be had where the Pope of Rome have not the seat of judgment, they may offer to shew their cause to be most agreeable to Christ's religion.

Next, To provide that Scotland might be governed, in all rules and offices, by the antient blood of the realm, without either captains, lieutenants, or soldiers, as all other Princes govern their countries, and especially that the forts might

be in the hands of mere Scottish men.

Thirdly, That they might never be occasioned to enter into wars against England, except England should give the first cause to Scotland.

Fourthly, That no nobleman of Scotland should receive pension of France, except it were whilst he did serve in France, for otherwise thereby the French would shortly corrupt many to betray their own country.

Fifthly, That no office, abbey, living, or commodity, be given to any but mere Scottish men, by the assent of the

three estates of the realm.

Sixthly. That there be a council in Scotland appointed in the Queen's absence, to govern the whole realm, and in

those cases not to be directed by the French.

Seventhly. That it be by the said three estates appointed how the Queen's revenue of the realm shall be expended. how much the Queen shall have for her portion and estate during her absence, how much shall be limited to the governance and defence of the realm, how much yearly appointed to be kept in treasure.

In these, and such like points, if the French King and the Queen be found unwilling, and will withstand these provisions for the weale of the land, then hath the three estates of the realm authority, forthwith, to intimate to the said King and Queen their humble requests; and if the same be not effectually granted, then humbly they may

commit the governance thereof to the next heir of the crown, binding the same also to observe the laws and ancient rights of the realm.

Finally, If the Queen shall be unwilling to this, as it is likely she will, in respect of the greedy and tyrannous affection of France, then it is apparent that Almighty God is pleased to transfer from her the rule of the kingdom for the weal of it, and this time must be used with great circumspection to avoid the decepts and tromperies of the French.

And then may the realm of Scotland consider, being once made free, what means may be devised by God's goodness, to accord the two realms, to endure for time to come at the pleasure of Almighty God, in whose hands the hearts of all Princes be.

## No. II. (Vol. II. p. 9.)

A Letter of Maitland of Lethington's, thus directed:-

To my loving friend James. Be this delivered at London.

20th January
1559-60.
Cott. Lib.
Cal. B.ix.
From the
original in
his own
hand.

I UNDERSTAND by the last letter I received from zow, that discoursing with zour countrymen upon the matter of Scotland, and comoditeys may ensew to that realm hereafter, giff ze presently assist ws with zour forces, ze find a nombre of the contrary advise, doubting that we sall not at length be found trusty frends, nor mean to contynew in constant ametye, albeit we promise, but only for avoyding the present dan-

ger make zow to serve our turne, and after being delivered, becum enemies as of before. For profe quhareof, they alledge things that have past betwixt ws heretofore, and a few presumptiones tending to the sam end, all grounded upon mistrust; quhilks, at the first sicht, have some shewe of apparence, gif men wey not the circumstances of the matter; but gif they will confer the tyme past with the present, consider the nature of this caus, and estate of our contrey, I doubt not but jugement sal be able to banish mistrust. And first, I wad wish ze should examyne the causes off the old inmittye betwixt the realms of England and Scotland, and quhat moved our ancestours to enter into ligue with the Frenche; quhilks by our storeys and registres

of antiquiteys appear to be these. The princes of England. some tyme, alledging a certain kynde of soveraintye over this realm; some tyme upon hye courage, or incited by incursions off our bordourares, and semblable occasions, mony tymes enterprised the conquest of ws, and sa far furth preist it by force off armes, that we wer dryven to great extramiteys, by loss of our Princes, our noblemen, and a good part of our cuntrey, sa that experience taught ws that our owne strength was scarse sufficient to withstand the force of England. The Frenche zour auncient enemyes, considering well how nature had sa placed ws in a iland with zow. that na nation was able sa to annoye England as we being enemyes, soucht to joine ws to theym in ligue, tending by that meane to detourne zour armyes from the invasion of France, and occupy zow in the defence off zour country at hame, offering for that effect to bestowe some charges upon ws, and for compassing off theyr purpos, choysed a tyme to propone the matter, guhen the fresche memory off injuris lately receaved at zour hands, was sa depely prented on our hartes, that all our myndes were occupied how to be revenged, and arme ourselfes with the powar off a forayne Prince against zour enterprises thereafter.

This was the beginning off our confederacy with France. At quhilk tyme, our cronicles maks mention, that some off the wysest foresaw the perril, and small fruite should redound to we thereof at lenth: zit had affection sa blinded jugement, that the advise of the maist part owercame the The maist part of all querells betwixt ws since that tyme, at least guhen the provocation came on our syde. hes ever fallen out by theyr procurement rather than any one caus off ourselfes: and quhensaever we brack the peace, it come partly by theyre intysements, partly to eschew the conquest intended by that realm. But now hes God's providence sa altered the case, zea changed it to the plat contrary, that now hes the Frenche taken zour place, and we, off very jugement, becum desyrous to have zow in theyr rowme. Our eyes are opened, we espy how uncareful they have been of our weile at all tymes, how they made ws ever to serve theyr turne, drew us in maist dangerous wevs for theyr commodite, and nevertheless wad not styck, oft tymes, against the natour of the ligue, to contrak peace. leaving ws in weyr. We see that their support, off late zeres, wes not grantit for any affection they bare to ws, for pytic they had off our estate, for recompense off the lyke friendship schawin to them in tyme off theyr afflictiones, but

for ambition, and insaciable cupidite to reygne, and to mak Scotland ane accessory to the crown of France. This was na friendly office, but mercenary, craving hyrc farre exceeding the proportion of theyr deserving; a hals realm for the defence of a part. We see they manifestly attempt the thing we suspected off zow: we feared ze ment the conquest off Scotland, and they are planely fallen to that work; we hated zow for doubt we had ze ment evill towards ws. and sall we love theym, quhilks bearing the name off frends, go about to bring ws in maist vile servitude? Cif by zour frendly support at this tyme, ze sall declare that not only sute ze not the ruyne off our countrey, but will preserve the libertie thereof from conquest by strangeares, sall not the occasion off all inimitie with zow, and ligue with theym, be taken away? The causes being removed, how sall the effectes remane? The fear of conquest made ws to hate zow and love theym, the cais changed, quhen we see theym planely attempt conquest, and zow schaw ws frendship, sall we not hate them, and favour zow? Gif we have schawne sa great constance, continuing sa mony zeares in amity with theym, off quhome we had sa small commodite, quhat sall move us to breake with zow, that off all nationes may do ws greatest plesour?

But ze will say, this mater may be reconcyled and then frends as off before. I think weill peace is the end of all weyr, but off this ze may be assured, we will never sa far trust that reconciliation, that we wil be content to forgo the ametye of England, nor do any thing may bring ws in suspicion with zow. Giff we wold at any tyme, to please theym, break with zow, should we not, besydes the losse off estimation and discrediting of ourselfes, perpetually expone our common weill to a maist manifest danger, and becum a pray to theyr tyranny? Quhais aid could we implore, being destitute of zour frendship, giff they off new wald attempt theyr formar enterprise? Quhat nation myght help ws giff they wald, or wald giff they myght? and it is lyke eneuch. they will not stick hereafter to tak theyr time off ws, guhen displesour and grudge hes taken depe rute on baith sydes, seeing ambition has sa impyrit ower theyr reason, that before we had ever done any thing myght offend theym, but by the contrary pleased theym by right and wrang, they did not stick to attempte the subversion of our hale state. I wald ze should not esteeme ws sa barayne of jugement, that we cannot forese our awne perril; or sa foolische, that we will not study by all gode means to entertayne that thing may

be our safetye; quhilk consistes all in the relaying of zour frendships. I pray zow consider in lyke case, when, in the days of zour Princes off maist noble memory King Henry the VIII. and King Edward the VI. meanes wer opened off amytye betwixt baith realms; was not at all tymes the difference of religion the only stay they wer not embraced? Did not the craft of our clergy and power of theyr adherents subvert the devises of the better sort? But now has God off his mercy removed that block furth of the way; now is not theyr practise lyke to tak place any mare, when we ar comme to a conformity off doctrine, and profes the same religion with zow, qubilk I take to be the straytest knot off amitye can be devised. Giff it may be alledged that some off our countrymen at ony tyme violated theyr promis. giff ze liff to way the circumstances, ze sall fynd the promis is rather brought on by necessite, after a great owerthraw off our men, then comme off fre will, and tending ever to our great incommodite and decay off our haill state, at leist sa But in this case, sall the preservation off our libertie be inseperably joined with the keping off promesse, and the violation off our fayth cast we in maist miserable servitude. Sa that giff neyther the feare off God, reverence of man, religion, othe, promise, nor warldly honestye wes sufficient to bynd ws, yet sall the zeale off our native countrey. the maintenance off our owne state, the safety of our wysses and childrene from slavery, compell we to kepe promisse. I am assured, it is trewly and sincerely ment on our part to continew in perpetual ametye with zow, it sall be uttered by our proceedings. Giff ze be as desirous of it as we ar. assurances may be devysed, quharby all partyes will be out There be gode meanes to do it, fit instruments for the purpos, tyme serves weill, the inhabitants of baith realms wish it. God hes wrought in the people's hartes on baith parties a certaine still agreement upon it, never did. at any tyme, so mony things concurre at ones to knyt it up. the disposition off a few, quahis harts are in Godis hands. may mak up the hale. I hope he guha hes begun this work. and mainteyned it qubile now, by the expectation of man. sall perfyte it.

I pray zow, let not zour men dryve time in consultation, quhether ze sall support ws or no. Seying the mater speaketh for itself, that ze mon take upon zow the defence off our caus, giff ze have any respect for zour awne weill. Their preparatives in France, and levying of men in Germany (quheyroff I am lately advertised), ar not altogydder or

devned for us, ze ar the mark they shote at; they seke our realme, but for ane entrey to zours. Giff they should directly schaw hostilite to zow, they knaw zo wald mak redy for theyme, therefor they do, by indirect meanes, to blind zow, the thing they dare not as zit planely attempte. They seme to invade us to th' end, that having assembled theyr hale forces sa nere zour bordours, they may unlok it to attack zow: It is ane off their ald fetches, making a schew to one place, to lyght on ane other. Remember how covertly zour places about Boulougne were assaizeit, and carryed away, ze being in peace as now. How the enterprise of Calais was fynely dissembled, I think ze have not sa sone forgotten. Beware of the third, prevent theyr policy by prudence. Giff ze se not the lyke disposition presently in theym, ze se nathing. It is a grosse ignorance to misknaw, what all nations planely speks off. Tak heed ze say not hereafter, "Had I wist;" ane uncomely sentence to procede off a wyse man's mouth. That is onwares chanced on to zow, quhilk zow commonly wissed, that this countrey might be divorsed from the Frensche, and is sa comme to pass as was maist expedient for zow. For giff by your intysement we had taken the mater in hand, ze myght have suspected we would have been ontrusty frends, and na langer continued stedfaste, then perril had appeared. now, quhen off our self, we have conceyved the hatered, provoked by private injuries, and that theyr evil dealing with ws hes deserved our inimitve, let no man doubte but they sall fynd ws ennemyes in ernest, that sa ungently hes demeyned our countrey, and at quhais hands we look for nathing but all extremitye, giff ever they may get the upper hand. Let not this occasion, sa happely offered, escape zow: giff ze do, neglecting the present opportunite, and hoping to have ever gode luk, comme sleaping upon zow, it is to be feared zour enemye waxe so great, and sa strang, that afterwards guhen ze wald, ze sall not be able to put him down; and then, to zour smart, after the tyme ze will acknowledge zour error. Ze have felt, by experience, quhat harme cometh off oversight, and trusting to zour enemyes promesse. We offer zow the occasion, quheyrby zour former losses may be repayred. Quhilk gif ze let over slyde, suffering ws to be owerrun, quha then, I pray zow, sall stay the Frensche, that they sall not invade zow in zour own boundes, sic is their lust to revene, that they can neyther be content with theyr fortune present, nor rest and be satisfied when they have gode luck, but will still follow on having in theyr awne brayne conceaved the image of sa great a conquest, quhat think ye sal be the end? Is ther any of sa small jugement, that he doth not foresee already, that theyr hail force sall then be bent against zow?

It sal not be amis, to consider in guhat case the Frensche be presently. Theyr estate is not always sa calme at hame as every man thinketh. And trewly it wes not they great redines for weyr made theym to tak this mater on hand, at this tyme, but rather a vayne trust in their awne policy, thinking to have found na resistance, theyr opinion hes deccaved theym, and that makes them now amased. estates off the empire (as I heare) has suted restitution off th' imperial towns Metz, Toull, and Verdun, quhilk may grow to some besynes; and all thing is not a calme within theyr awne countrey, the les fit they be presently for weyr, the mare oportune esteme ye the tyme for zow. Giff the lyke occasion wer offered to the Frensche against zow, wey. how gladly would they embrace it. Are ze not eschamed of zour sleuth, to spare theym that hes already compassed your destruction, giff they wer able? Consider with your self quhilk is to be choysed? To weyr against them out with zour realme or within? Giff quhill ze sleape, we sal be overthrowne, then sall they not fayle to fyte zow in zour owne countrey, and use ws as a fote stole to overloke zow. But some will say, perhaps, they meane it not. It is foly to think they wald not giff they wer able, quhen before hand they stick not to giff zour armes, and usurpe the style of zour Then quhat difference there is to camp within zour awne bounds or without, it is manifest. Giff two armyes should camp in zour countrey, but a moneth; albeit ve receaved na other harme, zit should zowr losse be greatar, nor all the charge ze will nede to bestow on our support will draw to, besydes the dishonour.

Let not me, that eyther lack gode advise, or ar not for perticular respects weill affected to the caus, move zow to subtract zour helping hand, by alleging things not apparent, for that they be possible. It is not, I grant, unpossible that we may receave conditiones of peace; but I see little likelyhode that our ennemyes will offer ws sik as will remove all mistrust, and giff we wald have accepted others, the mater had bene lang or now compounded. Let zow not be moved for that they terme ws rebelles, and diffames our just querell with the name of conspiracy against our soverayne. It is Hir Hyenes ryght we manetayne. It is the liberty off hir realme we study to preserve with the hazard of our lyves.

We are not (God knaweth) comme to this povnt for wantones, as men impacient of rewll, or willing to schake off the zoke of government, but ar drawne to it by necessite, to avoyde the tyranny of strangeares, seaking to defraude ws off lawful government. Giff we should suffer strangeares to plant themselffes peaceably in all the strenthes of our realme, fortify the sev-portes, and maist important places. as ane entre to a plain conquest, now in the minorite of our soverayne, beyng furth of the realme, should we not be thought oucareful off the common weill, betrayares of our native countrey, and evill subjects to Hir Majeste? Quhat other opinion could sche have off ws? Might she not justly hereafter call ws to accompt, as negligent ministeres? Giff strangeares should be thus suffered to broke the chefe offices, beare the hail rewll, alter and pervert our lawes and liberty at theyr plesour; myght not the people esteem our noblemen unworthy the place of counsalours? We mean na wyse to subtrak our obedience from our soverayne, to defraud Hir Hyenes off her dew reverence, rents and revenues off hir crown. We seke nathing but that Scotland may remane, as of before, a fre realme, rewlit by Hir Hyenes and hir ministeres borne men of the sam; and that the succession of the crown may remane with the lawful blode.

I wald not ze sould not sa lyttill esteme the friendship of Scotland, that ze juged it not worthy to be embraced. It sall be na small commodite for zow to be delivered off the annovance of so neir a nyghtbour, quhais inimitye may more trouble zow, then off any other nation albeit twyss as puissant, not lyeng dry marche with zow. Besydes that ze sall not nede to feare the invasion of any prince lackyng the commodite to invade zow by land, on our hand. Consider quhat superfluous charges ze bestowe on the fortification and keping of Barwick: quhilk ze may reduce to a mean sowme, having ws to frendes. The realme of Ireland being of natour a gode and fertill countrey, by reason of the continewalld unquietnes and lak of policy, ze knaw to be rather a burthen unto zow than great advantage; and giff it were peaceable may be very commodious. For pacification quhavroff, it is not onknowne to zow quhat service we ar abill to do. Refuse not theyr commoditeys, besides mony ma quhen they are offred. Quhilks albeit I study not to amplify and dilate, yet is na other countrey able to offer zow the lyke, and are the rather to be embraced, for that zour auncestors, by all meanes, maist earnestly suted our amity, and yet it was not theyr hap to come by it. The mater hes

almaist carryed me beyond the boundes off a lettre, quharfor I will leave to trouble zow after I have geven you this note. I wald wiss that ze, and they that ar learned, sould rede the twa former orations of Demosthenes, called Olynthiacæ, and considere quhat counsalt that wyse oratour gave to the Athenians, his countrymen, in a lyke case; quhilk hes so great affinite with this cause of ours, that every word thereoff myght be applied to our purpos. There may ze learne of him quhat advise is to be followed, when your nyghbours hous is on fyre. Thus I bid zow hartely larcweill. From Sant Andrews, the 20th of January 1559.

## No. III. (Vol. II. p. 15.)

Part of a Letter from Tho. Randolph to Sir William Cecil, from the camp before Leith, 29th of April, 1560.

Au original I WILL only, for this time, discharge myself of in the Pamy promise to the Earl of Huntly, who so deper Office. syreth to be recommended to you, as one, who, with all his heart, favoureth this cause, to the uttermost of his power. Half the words that come out of his mouth were able to persuade an unexperienced man to speak farther in his behalf, than I dare be bold to write. I leave it to your Honour to judge of him, as of a man not unknown to you, and will myself always measure my thoughts, as he shall deserve to be spoken of. With much difficulty, and great persuasion, he hath subscribed with the rest of the lords to join with them in this action; whatsomever he can invent to the furtherance of this cause, he hath promised to do with solemn protestation and many words; he trusteth to adjoin many to this cause; and saith surely that no man shall lie where he taketh part. He hath this day subscribed a bond between England and this nation; he saith, that there was never thing that liked him better.

# No. IV. (Vol. II. p. 26.)

Randolph to Cecil, 10th August, 1560. From Edinburgh.

An original Since the 29th of July, at what time I wrote in the Palast to your Honour, I have heard of nothing per Office. worth the reporting. At this present it may please you to know, that the most part of the nobles are here arrived, as your Honour shall receive their names in writing. The Earl of Huntly excuseth himself by an infirmity in his leg. His lieutenant for this time is the Lord of Lidington, chosen speaker of the parliament, or haranguemaker as these men term it. The first day of their sitting in parliament will be on Thursday next. Hitherto as many as have been present of the lords have communed and devised of certain heads then to be propounded, as, who shall be sent into France, who into England. It is much easier to find them than the other. It seemeth almost to be resolved upon, that for England the Master of Maxwell and Laird of Lidington. For France, Pittarow and the Justiceclerk. Also they have consulted whom they think meetest to name for the XXIV. of the which the XII. counsellors must be chosen. They intend very shortly to send away Dingwall the herald into France, with the names of those they shall chuse; and also to require the King and Queen's consent unto this parliament. They have devised how to have the contract with England confirmed by authority of parliament; how also to have the articles of the agreement between them and their King and Queen ratified. These things yet have only been had in communication. For the confirmation of the contract with England I have no doubt: for that I hear many men very well like the same, as the Earl of Athol, the Earl of Sutherland, the L. Glamis, who dined yesterday with the L. James. The Lord James requested me this present day to bring the contract unto him. I intend, also, this day, to speak unto the L. Gray, in our L. Gray's name, for that he promised in my hearing to subscribe, and then presently would have done it, if the contract could have been had. For the more assurance against all inconvenients, I would, besides that, that I trust it shall be ratified in parliament, that every nobleman in Scotland had put his hand and set his seal, which may always remain as a notable monument, tho' the act of parliament be hereafter disannulled. If it might, therefore, stand with your advice. that the lords might be written unto, now that they are here present, to that effect, or that I might receive from your Honr. some earnest charge to travel herein, I doubt not but it would serve to good purpose. If it might be also known with what substantial and effectious words or charge you desire to have it confirmed, I think no great difficulty would be made. The Earl Marshal has often been moved to subscribe, he useth mo delays than men judged he would. His son told me vesterday, that he would speak with me at leisure, so did also Drumlanrick: I know not to what purpose: I have caused L. James to be the earnester with the L.

Marshal, for his authority's sake, when of late it was in consultation by what means it might be wrought, that the amity between these two realms might be perpetual; and among diverse men's opinion, one said that he knew of no other, but by making them both one, and that in hope of that mo things were done, than would otherwise have ever been granted. The Earl of Argyll advised him earnestly to stick unto that that he had promised, that it should pass his power and all the crafty knaves of his counsel. (I am bold to use unto your H. his own words.) to break so godly a purpose. This talk liked well the assisters, howsomever it pleased him to whom it was spoken unto. The barons, who in time past have been of the parliament, had vesterday a convention among themselves in the church, in very honest and quiet sort; they thought it good to require to be restored unto their ancient liberty, to have voice in parliament. They presented that day a bill unto the lords to that effect. a copy whereof shall be sent as soon as it can be had. was answered unto gently, and taken in good part. It was referred unto the Lords of the Articles, when they are chosen, to resolve thereupon.—Here follows a long paragraph concerning the fortifications of Dunbar, &c. This present morning, viz. the 9th, I understood, that the lords intended to be at the parliament, which caused me somewhat to stay my letter, to see what I could hear or learn worth the reporting unto your Honr. The lords, at ten of the clock, assembled themselves at the palace, where the Duke lieth: from whence they departed towards the Tolbooth, as they were in dignity. Each one being set in his seat, in such order as your H. shall receive them in this scroll. The crown, the mace, the sword, were laid in the Queen's seat. Silence being commanded, the L. of Lidington began his oration. He excused his insufficiency to occupy that place. He made a brief discourse of things past, and of what necessity men were forced unto for the defence of their country, what remedy and support it pleased God to send them in the time of their necessity, how much they were bound heartily to acknowledge it, and to require it. He took away the persuasion that was in many men's mind that lay back, that misdeemed other things to be meant than was attempted. He advised all estates to lay all particulars apart. and to bend themselves wholly to the true service of God and of their country. He willed them to remember in what state it had been of long time for lack of government, and exercise of justice. In the end, he exhorted them to mutual

amity and hearty friendship, and to live with one another as members all of one body. — He prayed God long to maintain this peace and amity with all Princes, especially betwixt the realms of England and Scotland, in the fear of God, and so ended. The clerk of register immediately stood up, and asked them to what matter they would proceed: it was thought necessary, that the articles of the peace should be confirmed with the common consent, for that it was thought necessary to send them away with speed into France, and to receive the ratification of them as soon as might be. The articles being read, were immediately agreed unto: a day was appointed to have certain of the nobles subscribe unto them, and to put to their seals, to be sent away by a herald, who shall also bring the ratification again with him. barons, of whom I have above written, required an answer to their request; somewhat was said, unto the contrary. The barons alleged for them custom and authority. It was in the end resolved, that there should be chosen six to join with the Lords of the Articles, and that if they, after good advisement, should find it right and necessary for the commonwealth, it should be ratified at this parliament for a perpetual law. The lords proceeded immediately hereupon to the chusing of the Lords of the Articles. The order is, that the lords spiritual chuse the temporal, and the temporal the spiritual, and the burgesses their own. There were chosen as in this other paper I have written. This being done, the lords departed and accompanied the Duke, all as far as the Bow, (which is the gate going out of the high street.) and many down into the palace where he lieth. The town all in armour, the trumpets sounding, and other music such as they have. Thus much I report unto your Honour of that I did both hear and see. Other solemnities have not been used, saving in times long past the lords have had parliament robes, which are now with them wholly out of use.

The names of as many Earls and Lords spiritual and temporal as are assembled at this parliament.

### The Duke of Chatelherault.

$oldsymbol{E}$ arls.	Lords.	Lords spiritual.
Arran.	Erskine.	St. Andrews.
Argyll.	Ruthven.	Dunkell.
Athole.	Lindsey.	Athens.
Crawford.	Somerville.	The Bishop of the Isles.

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ソシム	HISTORY	UĽ	SCUIL	AND.

Earls.	Lords.	Lords spiritual.
Cassils. Marshall. Morton. Glencairn. Sutherland. Caithness. Rothes. Monteith.	Cathcart. Hume. Livingston. Innermeth. Boyd. Ogilvy. Fleming. Glamis. Gray. Ochiltree. Gordon.	Abbots and Priors, I know not how many.

### The Lords of the Articles.

Spiritual.	Temporal.	Barons elected to be of the Articles.
Athens.	The Duke.	Maxwell.
Isles.	Argyll.	Tillibardine.
Lord James.	Marshall.	Cunninghamhead.
Arbroath.	Athole.	Lochenvar.
Marshattle	Monton	Dittorow

Newbottle. Morton. Pittarow. Lindoris. Glencairn. Lundy. Cowpar. Ruthyen. Ten Pro

Cowpar. Ruthven. Ten Provosts of the chief Kinross. Erskine. towns, which also are of the Kilwinning. Boyd. Articles.

Kilwinning. Boyd. Articles. Lindsay.

So that with the Subprior of St. Andrews, the whole is 36.

It were too long for me to rehearse particularly the disposition, and chiefly the affections of these men, that are at this time chosen Lords of the Articles. May it satisfy your Honr. for this time to know, that, by the common opinion of men, there was not a substantialler or more sufficient number of all sorts of men chosen in Scotland these many years, nor of whom men had greater hope of good to ensue. This present morning, viz. the 10th, the L. of Lidington made me privy unto your letter; he intendeth, as much as may be, to follow your advice. Some hard points there are. He himself is determined not to go into France. He allegeth many reasons, but speaketh least of that, that moveth him most, which is the example of the last, that went on a more grateful message than he shall carry, and stood on other terms with their Prince than he doth, and yet your Honour knoweth what the whole world judgeth.

### Petition of the Lesser Barons to the Parliament held August, 1560.

My Lords, unto your Lordships humbly Enclosed means and shows, we the Barons and Freein Randolph's letholders of this realm, your brethren in Christ, ter to Cecila That whereas the causes of true religion, and 15th Aucommon well of this realm, are, in this present gust, 1560. parliament, to be treated, ordered, and established, to the glory of God, and maintenance of the commonwealth; and we being the greatest number in proportion, where the said causes concern, and has been, and yet are ready to bear the greatest part of the charge thereuntil. as well in peace as in war, both with our bodies and with our goods; and seeing there is no place where we may do better service now than in general councils and parliaments. in giving our best advice and reason, vote and councell for the furtherance thereof, for the maintenance of virtue and punishment of vice, as use and custom had been of old by ancient acts of parliament observed in this realm; and whereby we understand that we ought to be heard to reason and vote in all causes concerning the commonwealth, as well in councils as in parliament; otherwise we think that whatsomever ordinances and statutes be made concerning us and our estate, we not being required and suffered to reason and vote at the making thereof, that the same should not oblige us to stand thereto. Therefore it will please your Lordships to take consideration thereof, and of the charge born, and to be born by us, since we are willing to serve truly to the common well of this realm, after our estate, that ye will, in this present parliament, and all consells, where the common well of the realm is to be treated, take our advice. counsell, and vote, so that, without the same, your Lordships would suffer nothing to be passed and concluded in parliament or councils aforesaid; and that all acts of parliament made, in times past, concerning us for our place and estate, and in our favour, be at this present parliament confirmed, approved, and ratified, and act of parliament made thereupon. And your Lordships' answer humbly beseeches.

Of the success of this petition, the following account is given by Randolph; Lett. to Cecil, 19 Aug. 1560.—The matters concluded and past by common consent on Saturday last, in such solemn sort as the first day that they assembled, are these: First, that the barons, according to an old act of parliament, made in the time of James I., in the year of God

1427, shall have free voice in parliament; this act passed without any contradiction.

# No. V. (Vol. II. p. 34.)

A Letter of Thomas Randolph, the English Resident, to the Right Worshipful Sir William Cecil, Knt. Principal Secretary to the Queen's Majesty.

9th Aug. I have received your Honour's letters of the first of this month, written at Osyes in Essex; 1561. Cott. Lib. B. 10. and also a letter unto the Lord James, from his fo. 32. kiusman St. Come out of France; in this they agree both that the Queen of Scotland is nothing changed of her purpose in home coming. I assure your Honour that will be a stout adventure for a sick crased woman, that may be doubted as well what may happen unto her upon the seas, as also how heartily she may be received when she cometh to land of a great number, who are utterly persuaded that she intendeth their utter rum, come when she will; the preparance is very small when soever that she arrive, scarcely any man can be persuaded that she hath any such thought in her head. I have shewn your Honour's letter unto the Lord James, Lord Morton, Lord Lidington; they wish, as your Honour doth, that she might be stayed yet for a space, and if it were not for their obedience sake, some of them care not they never saw her face. They travel what they can to prevent the wicked devices of these mischievous purposes of her ministers, but I fear that that will always be found that filij hujus seculi, they do what they can to stand with the religion, and to maintain amity with their neighbours; they have also need to look unto themselves, for their hazard is great, and that they see there is no remedy nor safety for themselves, but to repose themselves upon the Queen's Majesty, our sovereign's favour and support. Friends abroad they have none, nor many in whom they may trust at home. They are in mind shortly to try what they may be assured at of the Queen's Majesty, and what they may assuredly perform of that they intend to offer for their parties. This the Queen of Scotland above all other things doubteth; this she seeketh by all means to prevent; and hath caused St. Come, in her name, earnestly to write to charge him that no such things be attempted before her coming home; for that it is said, that they too already arrived here out of England for the purpose, what semblance somever the noblemen do make, that they are grieved with their

Queen's refusal, that cometh far from their hearts. They intend to expostulate with me hereupon. I have my answer ready enough for them. If she thrust Englishmen all out of this country. I doubt not but there will be some of her own that will bear us some kindness. Of me she shall be quit. so soon as it pleaseth the Queen's Majesty, my mistress, no longer to use my service in this place. By such talk, as I have of late had with the Lord James and Lord of Lidington, I perceive that they are of mind that immediately of the next convention. I shall repair towards you with their determinations, and resolutions, in all purposes, wherein your Honour's advice is earnestly required, and shortly looked Whatsomever I desire myself, I know my will ought to be subject unto the Queen my sovereign's pleasure, but to content myself, would God I were so happy as to serve Her Majesty in as mean a state as ever poor gentleman did, to be quit of this place; not that I do in my heart wax weary of Her Majesty's service, but because my time and years require some place of more repose and quietness than I find in this country. I doubt also my insufficience when other troubles in this country arise, or ought shall be required of me to the advancement of Her Majesty's service, that either my will is not able to compass, or my credit sufficient to work to that effect, as perchance shall be looked for at my As your Honour hath been a means of my continuance in this room, so I trust that I shall find that continual favour at your hands, that so soon as it shall stand with the Queen's Majesty's pleasure, I may give this place unto some far worthier than I am myself, and in the mean season have my course directed by your good advice, how I may by my contrivance do some such service as may be agrecable to Her Majesty's will and pleasure.

These few words I am bold to write unto your Honour of myself. For the rest, where that is wished that the lords will stoutly continue yet for one month, I assure your Honour that there is yet nothing omitted of their old and accustomed manner of doing, and seeing that they have brought that unto this point, and should now prevail, they

were unworthy of their lives.

I find not that they are purposed so to leave the matter. I doubt more her money than I do her fair words; and yet can I not conceive what great things can be wrought with forty thousand crowns, and treasure of her own here I know there is no sure or ready means to get it. The Lord of Lidington leaveth nothing at this time unwritten, that he think-

eth may be able to satisfye your desire, in knowledge of the present state of things here. Whatsomever cometh of that. he findeth it ever best that she come not; but if she do come, to let her know, at the first, what she shall find, which is due obedience, and willing service, if she embrace Christ, and desire to live in peace with her neighbours. By such letters as you have last received, your Honour somewhat understandeth of Mr. Knox himself, and also of others, what is determined: he himself to abide the uttermost, and other never to leave him until God have taken his life, and thus together with what comfort somever it will please you to give him by your letters, that the Queen's Majesty doth not utterly condemn him, or at the least in that point that he is so sore charged with by his own Queen, that Her Majesty will not allow her doing. I doubt not but it will be a great comfort unto him, and will content many others: his daily prayer is for the maintenance of unity with England, and that God will never suffer men to be so ungrate, as by any persuasion to run headlong unto the destruction of them that have saved their lives, and restored their country to liberty. I leave farther, at this time, to trouble your Honour, desiring God to send such an amity between these two realms that God may be glorified to them of this world.—At Edenbourgh the 9th of August, 1561.

### No. VI. (Vol. II. p. 42.)

A Letter from Queen Elizabeth to Queen Mary.<sup>2</sup>
To the right excellent, right high, and mighty Princesse, our right dear and well-beloved sister and cousin the Queen of Scotland.

RIGHT excellent, right high, and mighty Princesse, our right dear and right well-beloved sisper Office, from a copy.

St. Cosme brought to us your letters, dated the Sth of this present at Abbeville, whereby ye signify, that although by the answer brought to you by Monsieur Doyzell, ye might have had occasion to have entered into some doubt of our amity, yet after certain purposes passed betwixt you and our ambassador, you would assure us of your good meaning to live with us in amity, and for

<sup>&</sup>lt;sup>a</sup> This is the complete paper of which that industrious and impartial collector, Bishop Keith, has published a fragment, from what he calls his shattered MS. 154, note (a) 181.

your purpose therein ye require us to give credit to the said St. Cosme. We have thereunto thought good to answer as followeth: The same St. Cosme hath made like declaration unto us on your part, for your excuse in not ratifying the treaty, as yourself made to our ambassador, and we have briefly answered to every the same points, as he can shew you: and if he shall not so do, yet least in the mean season you might be induced to think that your reasons had satisfied us, somerally we assure you, that to our requests your answer cannot be reputed for a satisfaction. For we require no benefit of you, but that you will perform your promise whereunto you are bound by your seal and your hand, for the refusal whereof we see no reason alledged can serve. Neither covet we any thing, but that which is in your own power as Queen of Scotland, that which yourself in words and speech doth confess, that which your late husband's our good brother's ambassadors and you concluded, that which your own nobility and people were made privy unto that which indeed made peace and quietness betwixt us, yea that without which no perfect amity can continue betwixt us, as if it be indifferently weighed, we doubt not but ye will perceive, allow, and accomplish. Nevertheless, perceiving, by the report of the bringer, that you mean furthwith upon your coming home, to follow herein the advice of your council in Scotland, we are content to suspend our conceipt of all unkindness, and do assure you that we be fully resolved, upon this being performed, to unite a sure band of amity, and to live in neighbourhood with you as quietly, friendly, yea as assuredly in the knot of friendship, as we be in the knot of nature and blood. And herein we be so earnestly determined, that the world should see if the contrary should follow (which God forbid) the very occasion to be in you and not in us; as the story witnesseth the like of the King your father, our uncle, with whom our father sought to have knitt a perpetual bond by inviting to come in this realm to York, of which matter we know there remain with us, and we think with you, sundry witnesses of our father's earnest good meaning, and of the error whereunto divers evil councillors induced your father; or, finally, where it seemeth that report hath been made unto you, that we had sent our admiral to the seas with our navy to empeache your passage, both your servants do well understand how false that is, knowing for a truth that we have not any more than two or three small barks upon the seas, to apprehend certain pirates, being thereto entreated, and almost compelled.

by the earnest complaint of the ambassador of our good brother the King of Spain, made of certaine Scottishmen haunting our seas as pirates, under pretence of letters of marque, of which matter also we earnestly require you, at your coming to your realme, to have some good consideration, and the rather for respect that ought to be betwixt your realme and the countries of us, of France, of Spain, and of the house of Burgundy. And so, right excellent, right high, and mighty Princess, we recommend us to you with most earnest request, not to neglect these our friendly and sisterly offers of friendship, which, before God, we mean and intend to accomplish. Given under our signet at Henyngham the 16th of August, in the third year of our reign.

## No. VII. (Vol. II. p. 68.)

A Letter of Randolph to the Right Honourable Sir William Cecil, Knight, Principal Secretary to the Queen's Majesty.

15th May, 1563. Paper Office, from the original. Of late, until the arrival of Monsieur Le Croch, I had nothing worth the writing unto your Honour. Before his coming we had so little to hint upon, that we did nothing but pass our time in feasts, banquetting, masking, and running at the ring, and such like. He brought

with him such a number of letters, and such abundance of news, that, for the space of three days, we gave ourselves to nothing else but to reading of writings, and hearing of tales, many so truly reported, that they might be compared to any that ever Luciane did write de veris narrationibus. Among all his tidings, for the most assured, I send this unto your Honour as an undoubted truth, which is, that the Cardinal of Lorraine, at his being with the Emperor, moved a marriage between his youngest son, the Duke of Astruche, and this Queen; wherein he hath so far travailed, that it hath already come unto this point, that if she find it good, the said Duke will out of hand send hither his ambassador, and farther proceed to the consummation hereof, with as convenient speed as may be; and to the intent her mind may be the better known, Le Croch is sent unto her with this message from the Cardinal, who hath promised unto the Emperor to have word again before the end of May; and for this cause Le Croch is ready for his departure, and his letters writing both day and night. This Queen being before advertised of his towardness, by many means hath sought far

off to know my Lord of Murray's mind herein, but would never so plainly deal with him, that he could learn what her meaning is, or how she is bent. She useth no man's council but only this man's that last arrived, and assuredly until the L. of Lidington's return, she will do what she can to keep that secret: and because resolution in his absence cannot be taken, she will, for this time, return Le Croch with request to have longer time to devise; and after, with the most speed she can, she fully purposeth to advertise him, I mean her uncle the Cardinal, of her mind. Of this matter the L. of Lidington is made privy. I know not whether by some intelligence that he had before his departure, or since his arrival in France, divers letters have passed between her Grace and him, whereof as much as it imported not greatly the knowledge of, was communicated to some, as much as was written in sypher is kept unto themselves. Whether also the L. of Lidington bath had conference with the Spanish ambassador in England of this matter or any like, I leave it unto your Honour's good means to get true knowledge thereof. Guesses or surmizes in so grave matters. I would be loth to write for verities. This also your Honour may take for truth, that the Emperor hath offered with his son, for this Queen's dower, the county of Tyroll, which is said to be worth 30,000 franks by year. Of this matter also the Rhingrave wrote a letter unto this Queen out of France, not long This is all that presently I can write unto your Honour hereof: as I can come by farther knowledge, your Honour shall be informed.

I have received your Honour's writings by the Scottish man that last came into these parts; he brought also letters unto this Queen from the L. of Lidington; their date was old, and contained only the news of France. I perceive divers ways that Newhaven is sorre closed, but I am not so ignorant of their nature, but that I know they will say as much as they dare do, I will not say as the proverb doth, 'canis timidus fortius latrat.' From hence I do assure them, what means somever they make, or how pitiful somever their mone be, they are like to receive but small comfort for all their long allie. We stand daily in doubt what friendship we shall need ourself, except we put better order into our misruled Papists than yet we do, or know how to bring to pass that we may be void of their comber.

To-morrow, the 15th of this instant, the Queen departeth of this town towards Edenborough. If my hap be good, you shall thoroughly hear some merry tidings of the Bp. of

St. Andrews; upon Wednesday next he shall be arreigned, and five other pricests, for their massing at Easter last. Thus most humbly I take my leave. At St. Andrew's the 15th of May, 1563.

## No. VIII. (Vol. II. p. 76.)

Letter of Randolph to the Right Honourable Sir William Cecil, Knight, Principal Secretary to the Queen's Majesty.

10th April, 1563. Paper Office, from the original in his own hand. May it please your Honour, the 7th of this instant, Rowlet, this Queen's secretary, arrived here; he reporteth very honestly of his good usage; he brought with him many letters unto the Queen that came out of France, full of lamentation and sorrow. She received from the Queen-mother two letters; the one contained

only the rehearsal of her griefs, the other signify the state of France as then it was, as in what sort things were accorded, and what farther was intended for the appeasing of the discords there, not mistrusting but that if reason could not be had at the Queen of England's hands, but that the realm of France should find her ready and willing to support and defend the right thereof, as by friendship and old alliance between the two realms she is bound.

How well these words do agree with her doings your Honour can well consider, and by her writings in this sort unto this Queen (which I assure your Honour is true), you may assuredly know, that nothing shall be left undone of her part, that may move debate or controversie between this

Queen and our sovereign.

It was much mused by the Queen herself, how this new kindness came about, that at this time she received two long letters, written all with her own hand, saying, all the time since her return she never received half so many lines as were in one of the letters, which I can myself testify by the Queen's own saying, and other good assurance, where hitherto I have not been deceived. I can also farther assure your Honour, that this Queen hath sayed that she knoweth now, that the friendship of the Queen's Majesty my sovereign may stand her more in stead than that of her good mother in France, and as she is desirous of them both, so will she not lose the one for the other. I may also farther assure your Honour, that whatsomever the occasion is, this Queen hath somewhat in her heart that will burst out in time, which will manifest that some unkindness hath passed

hetween them that will not be easy forgotten. In talk sometimes with myself, she saith that the Queen-mother might have used the matter otherwise than she hath done. and doth much doubt what shall be the success of her great desire to govern alone, in all things to have her will. Seeing then that presently they stand in such terms one with the other, I tho't it better to confirm her in that mind (this Queen I mean), than to speak any word that might cause her to conceive better of the other. And yet I am assured she shall receive as friendly letters, and as many good words from this Queen, as the other did write unto her. Whether the Queen-mother will speak any thing unto the L. of Lidington of that purpose she did write unto this Queen of. I know not: but if she do. I think it hard if your Honour can get no favour thereof, at his return, or I perchance by some means here. It may perchance be written only by that Queen, to try what answer this Queen will give, or understand what mind she beareth unto the Queen's Majesty our sovereign. The Queen knoweth now that the Earl Bothwell is sent for to London. She caused a gentleman of hers to inquire the cause; I answered that I knew none other, but that his takers were in controversy who took him. and that it should be judged there. I know that she thinketh much that he is not sent into Scotland. It is yet greatly doubted that if he were here, he would be reserved for an evil instrument. If the Lord of Lidington have not been plain with your Honour herein, he is in the wrong to those who are his friends here, but most of all to himself. There comes a vulture in this realm, if ever that man come again into credit.

## No. IX. (Vol. II. p. 82.)

The Oration made by William Maitland of Lethington. younger secretary for the time, in the parliament holden by our sovereign the King's mother, Queen of this realm for the time, the time of the restitution of Umquile Matthew Earl Lenox.

My Lords, and others here convened. Albeit, be that it has pleased Her Majesty most graciously to utter unto you, by her own mouth, ye may have sufficiently conceived the cause of this your present assembly; yet having Her Majesty's commandment to supply my Lord Chancellor's place, being presently as ye see deceased, I am willed to express the same somewhat more at large.

Notour it is, how, in Her Highness's minority, a process of forfaltour was decreed against my Lord of Lennox, for certain offences alledged committed by him; specified in the dome and censement of parliament given thereupon; by reason whereof he has this long time been exiled, and absent forth of his native country; how grievous the same has been unto him, it has well appeared by divers his suites. sundry ways brought unto Her Majesty's knowledge, not only containing most humble and due submission, but always bearing witness of his good devotion to Her Majesty, his natural Princess, and earnest affection he had to Her Highness' most humble service, if it should please Her Majesty of her clemency to make him able to enjoy the benefit of a subject. Many respects might have moved Her Highness favourably to incline to his request, as the anciency of his house, and the sirname he bears, the honour he has to appertain to Her Majesty by affinity, by reason of my Lady Margaret Her Highness's aunt, and divers other his good considerations, as also the affectuous request of her good sister the Queen's Majesty of England, whose earnest commendation was not of least moment; besides that, of her own natural, Her Majesty has a certain inclination to pity the decay of noble houses, and as we heard, by her own report, has a great deal more pleasure to be the instrument of the uphold, maintenance, and advancement of the ancient blood, than to have matter ministred of the decay or overthrow of any good race. Upon this occasion, Her Majesty the more tenderly looked upon his request, and her good sister the Queen of England's favourable letter, written for recommendation of his cause, in consideration whereof not only has she granted unto him her letter of restitution, by way of grace, but also licensed him to pursue, by way of reduction, the remedies provided by the law for such as think themselves grieved by any judgment, unorderly led, and to have the process reversed; for examination whereof, it has pleased Her Majesty presently to assemble you the three estates of this her realme, by whose advise, deliberation, and decision, at Her Majesty's mind, to proceed forward upon his complaints, as the merits of the cause, laws of the realm, and practice observed in such cases, will bear out. sum of all your proceedings at this time being, by that we have heard, thus as it were pointed out, I might here end, if the matter we have in hand gave me not occasion to say a few more words, not far different from the same subject, wherein I would extend the circumstances more largely. if

I feared not to offend Her Highness, whose presence and modest nature abhors long speaking and adulation, and so will compel me to speak such things, as may seem to tend to any good and perfect point; and lest it should be compted to me, as that I were oblivious, if I should omit to put you in remembrance, in what part we may accept this, and the like demonstrations of her gentill nature; whose gracious behaviour towards all her subjects, in general, may serve for a good proof of that felicity we may look for under her happy government, so long as it shall please God to grant her unto us; for a good harmony to be had in the common weill, the offices between the Prince and the subjects must be reciproque, as by Her Majesty's prudence we enjoy this present peace with all foreign nations, and quietness among yourselves, in such sort, that I think justly it may be affirmed Scotland, in no man's age that presently lives, was in greater tranquillity; so is it the duty of all us her loving subjects to acknowledge the same as a most high benefit, proceeding from the good government of Her Majesty, declaring ourselves thankful for the same, and rendering to Her Majesty such due obedience, as a just Prince may look for at the hands of faithful and obedient subjects. I mean no forced nor unwilling obedience, which I know her nature does detest, but such as proceeds from the contemplation of her modest kind of regiment, will for love and duty sake produce the fruits thereof. A good proof have we all in general had of Her Majesty's benignity these three years that she has lived in the government over you, and many of you have largely tasted of her large liberality and frank dealing; on the other part Her Highness has had large appearance of your dutiful obedience, so it becomes you to continue, as we have begun, in consideration of the many notable examples of her clemency above others her good qualities, and to abhor and detest all false bruites and rumours, which are the most pestilent evils that can be in any common weil, and the sowers and inventors thereof. Then we may be well assured to have of her an most gracious Princesse, and she most faithful and loving subjects; and so both the head and the members, being encouraged to maintain the harmony and accord of the politic bodies, whereof I made mention before, as the glory thereof shall partly appertain to Her Majesty, so shall no small praise and unspeakable commodity redound therethrough to you all universally her subjects.

## No. X. (Vol. II. p. 91.)

The perils and troubles that may presently ensue, and in time to come follow, to the Queen's Majesty of England and state of this realm, upon the marriage of the Queen of Scots to the Lord Darley.

First, the minds of-such as be affected to the Queen of Scots, either for herself, or for the opinion of her pretence to this crown, or for the desire to have change of the forme of religion in this realm, or for the discontentation they have of the Queen's Majesty, or her succession, or of the succession of any other beside the Queen of Scotts, shall be, by this marriage erected, comforted, and induced to devise and labour how to bring their desires to pass; and to make some estimate what persons those are, to the intent the quantity of the danger may be weighed, the same may be compassed in those sorts either within the realm or without.

The first are such as are specially devoted to the Queen of Scotts, or to the Lord Darley, by bond of blood and alliance; as first, all the house of Lorrain and Guise for her part, and the Earl of Lennox and his wife, all such in Scotland as be of their blood, and have received displeasures by the Duke of Chatelherault and the Hamiltons. The second are all manner of persons, both in this realm and other countries, that are devoted to the authority of Rome, and mislike of the religion now received; and in these two sorts are the substance of them comprehended, that shall take comfort in this marriage.

Next therefore to be considered what perils and troubles

these kind of men shall intend to this realm.

First, the general scope and mark of all their desires is, and always shall be, to bring the Queen of Scotts to have the royal crown of this realm; and therefore, though the devisees may vary among themselves for the compassing hereof, according to the accidents of the times, and according to the impediments which they shall find by means of the Queen's Majesty's actions and governments, yet all their purposes, drifts, devises, and practices, shall wholly and only tend to make the Queen of Scotts Queen of this realm, and to deprive our sovereign lady thereof; and in their proceedings, there are two manners to be considered, whereof the one is far worse than the other; the one is intended by them, that either from malicious blindness in religion, or for natural affection to the Queen of Scotts, or the Lord Dar-

ley, do persuade themselves that the said Queen of Scotts hath presently more right to the crown than our sovereign lady the Queen, of which sort be all their kindred on both sides, and all such as are devoted to Popery, either in England, Scotland, Ireland, or elsewhere; the other is meant by them, which, with less malice, are persuaded that the Queen of Scotts hath only right to be the next heir to succeed the Queen's Majesty and her issue, of which sort few are without the realm, but here within, and yet of them, not so many as are of the contrary; and from these two sorts shall the peril, devises, and practises proceed. From the first, which imagine the Queen of Scotts to have perpetually right, are to be looked for these perils. First, is it to be doubted the devil will infect some of them to imagine the hurt of the life of our dear sovereign lady, by such means as the devil shall suggest to them, although it is to be assuredly hoped, that Almighty God will, as he has hitherto, graciously protect and preserve her from such dangers? Secondly, there will be attempted, by persuasions, by bruites, by rumours, and such like, to alienate the minds of good subjects from the Queen's Majesty, and to counciliate them to the Queen of Scotts, and on this behalf the frontiers and the North will be much solicited and laboured. Thirdly, there will be attempted causes of some tumults and rebellions. especially in the North toward Scotland, so as thereupon may follow some open enterprise set by violence. Fourthly. there will be, by the said Queen's council and friends, a new league made with France, or Spain, that shall be offensive to this realm, and a furtherance to their title. And as it is also very likely, that they will set a-foot as many practices as they can, both upon the frontiers and in Ireland, to occasion the Queen's Majesty to increase and continue her charge thereby, to retain her from being mighty or potent, and for the attempting of all these things, many devises will be imagined from time to time, and no negligence will therein appear.

From the second sort, which mean no other favour to the Queen of Scotts, but that she should succeed in title to the Queen's Majesty, is not much to be feared, but that they will content themselves to see not only the Queen's Majesty not to marry, and so to impeach it, but to hope, that the Queen of Scotts shall have issue, which they will think to be more pleaseable to all men, because thereby the crowns of England and Scotland shall be united in one, and thereby the occasion of war shall cease; with which persuasion many

people may be seduced, and abused to incline themselves to the part of the Queen of Scotts.

The remedies against these perils.

#### A DUPLICAT.

4th of June 1565. Cott. Lib. Cal. B. 10. fol. 290. A summary of the consultation and advice given by the Lords and others of the Privy Council. Collected out of the sundry and several speeches of the said counsellors.

Lord Keeper, Lord Treasurer,

Mr. Comptroller, Mr. Vice Chamberlain, Mr. Secretary,

Earls of Bedford,
Leicester,
Lord Admiral,

Lord Chamberlain,

Cave, Peter, Mason.

Questions propounded were these two:

1. First, what perils might ensue to the Queen's Majesty, or this realm, of the marriage betwixt the Queen of Scotts and the Lord Darnley.

2. What were meet to be done, to avoid or remedy the

same.

### To the First.

The perils being sundry, and very many, were reduced

by some counsellors into only one.

1. First, That by this marriage, the Queen of Scotts, (being not married,) a great number in this realm not of the worst subjects might be alienated in their minds from their natural duties to Her Majesty, to depend upon the success of this marriage of Scotland, as a mean to establish the succession of both the crowns in the issue of the same marriage, and so favour all devises and practises that should tend to the advancement of the Queen of Scotts.

2. Secondly, That considering the chief foundation of them, which furthered the marriage of Lord Darnley, was laid upon the trust of such as were Papists, as the only means left to restore the religion of Rome, it was plainly to be seen, that both in this realm and Scotland, the Papists would most favour, maintain, and fortify this marriage of the Lord Darnley, and would, for furtherance of faction in religion, devise all means and practices that could be within this realm, to disturb the estate of the Queen's Majesty, and the

peace of the realm, and consequently to atchieve their purposes by force rather than fail. By some other, these perils having indeed many branches, were reduced, though somewhat otherwise, into two sorts, and these were in nature such as they could not be easily severed the one from the other, but were knit and linked together naturally, for maintaining the one with the other. The first of these sorts of perils was, that, by this marriage, with the Lord Darnley, there was a plain intention to further the pretended title of the Queen of Scotts, not only to succeed the Queen's Majesty, as in her best amity she had professed, but that to occupy the Queen's estate, as when she was in power she did manifestly declare.

The second was, that hereby the Romish religion should be erected, and increased daily in this realm, and these two were thus knit together, that the furtherance and maintenance of the title staid in furthering of the religion of Rome within this realm; and in like manner the furtherance of the same religion stood by the title, for otherwise the title had no foundation.

Proves of the first.) And to prove that the intention to advance the title to disturb the Queen's Majesty must needs ensue, was considered that always the intention and will of any person is most manifest, when their power is greatest, and contrary when their power is small; then the intention and will of every person is covered and less seen. So as when the Queen of Scotts power was greatest, by her marriage with the Dauphin of France, being afterwards French King, it manifestly appeared of what mind she and all her friends were, using then manifestly all the means that could be devised to impeach and dispossess the Queen's Majesty, first by writing and publishing herself in all countries Queen of England; by granting charters, patents, and commissions, with that style, and with the arms of England, both the French and Scotts, which charters remain still undefaced; and, to prosecute it with effect, it is known what preparations of war were made, and scut into Scotland; and what other forces were assembled in foreign countries; yea, in what manner a shameful peace was made by the French with King Philip to employ all the forces of France to pursue all the matters by force, which by God's providence and the Queen's Majesty contrary power, were repelled; and afterwards, by her husband's death, her fortune and power being changed, the intention began to hide itself, and although by

the Scottish Queen's commissaries an accord was made at Edenbrough, to reform all those titles, and claims, and pretences, yet to this day, by delays and cavillations, the ratification of that treaty has been deferred. And so now, as soon as she shall feel her power, she will set the same again abroad, and by considering of such errors as were committed in the first, her friends and allies will amend the same, and proceed substantially to her purpose. By some it was thought plainly, that the peril was greater of this marriage with the Lord Darnley, being a subject of this realm, than with the mightiest Prince abroad, for by this, he being of this realm, and having for the cause of religion, and other respects, made a party here, should encrease by force with diminution of the power of the realm; in that whatsoever power he could make by the faction of the Papist, and other discontented persons here, should be as it were deducted out of the power of this realm; and by the marriage of a stranger, she could not be assured of any part here; so as by this marriage she should have a portion of her own power to serve her turn; and a small portion of adversaries at home in our own bowels, always seem more dangerous than treble the like abroad, whereof the examples are in our own stories many, that foreign powers never prevailed in this realm, but with the help of some at home. It was also remembered, that seeing how before this attempt of marriage, it is found, and manifestly seen, that in every corner of the realm, the faction that most favoureth the Scottish title is grown stout and bold, yea seen manifestly in this court, both in hall and chamber, it could not be but (except good heed were speedily given to it) by this marriage, and by the practice of the fautors thereof, the same faction would shortly increase and grow so great and dangerous, as the redress thereof would be almost desperate. And to this purpose it was remembered, how of late, in perusing of the substance of the justices of the peace, in all the countries of the realm, scantly a third was found fully assured to be trusted in the matter of religion, upon which only string the Queen of Scotts fitle doth hang, and some doubt might be, that the friends of the Earl of Lennox, and his had more knowledge hereof than was thought, and thereby made avant now in Scotland, and their party was so great in England as the Queen's Majesty durst not attempt to contrary his marriage. And in this sort was the sum of the perils declared, being notwithstanding more largely and plainly set out, and

amade so apparent by many sure arguments, as no one of the council could deny them to be but many and very dangerous.

#### Second Question.

The question of this consultation was, what were meet to be done to avoid these perils, or else to divert the force thereof from hurting the realm; wherein there were a great number of particular devises propounded, and yet the more part of them was reduced by some into three heads.

1. The first thought necessary by all persons, as the only thing of the most moment and efficacy, to remedy all these perils, and many others, and such as without it no other remedy could be found sufficient, and that was to obtain that the Queen's Majesty would marry, and make therein no long delay.

2. The second was, to advance, establish, and fortify indeed the profession of religion, both in Scotland and in England, and so diminish, weaken, and feeble the contrary.

3. The third was, to proceed in sundry things, either to disappoint and break this intended marriage, or, at the least, thereby to procure the same not to be so hurtful to this realm as otherwise it will be.

The first of these three hath no particular rights in it, but an earnest and unfeigned desire and suite, with all humbleness, by prayer to Almighty God, and advice and council to the Queen's Majesty, that she would defer no more time from marriage, whereby the good subjects of the realm might stay their hearts, to depend upon her Majesty, and the issue of her body, without which no surety can be devised to ascertain any person of continuance of their families or posterities, to enjoy that which otherwise should come to them.

Second, Concerning the matters of religion, wherein both truth and policy were joined together, had these particulars.

First, whereas of late the adversaries of religion, in the realm, have taken occasion to comfort and increase their faction, both in England, Scotland, and abroad, with a rumour and expectation that the religion shall be shortly changed in this realm, by means that the bishops, by the Queen's Majesty's commandment, have of late dealt streightly with some persons of good religion, because they had forborn to wear certain apparel, and such like things;

being more of form and accidents than of any substance, for that it is well known that her Majesty had no meaning to comfort the adversaries, but only to maintain an uniformity as well in things external, as in the substance, nor yet hath any intention to make any change of the religion. as it is established by laws. It was thought by all men very necessary, for the suppressing of the pride and arrogancy of the adversaries; indirectly hereby to notify, by her special letters to the two archbishops, that her former commandment was only to retain an uniformity, and not to give any occasion to any person to misjudge her Majesty, in the change of any part of religion, but that she did determine firmly to maintain the form of her religion, as it was established, and to punish such as did therein violate her laws. And in these points, some also wished that it might please her archbishops, that if they should see that the adversaries continued in taking occasion to fortify their faction, that in that case they should use a moderation therein until the next parliament, at which time, some good, uniform, and decent order might be devised and established for such ceremonies, so as both uniformity and gravity might be retained amongst the clergy.

The second means was, that the quondam bishops, and others, which had refused to acknowledge the Queen's Majesty's power over them, according to the law, and were of late dispersed in the plague time to sundry places abroad, where it is known they cease not to advance their faction, might be returned to the tower, or some other prison, where they might not have such liberty to seduce and inveigle the Queen's Majesty's subjects as they daily

do

The third means was, that where the bishops do complain that they dare not execute the ecclesiastical laws to the furtherance of religion, for fear of the premunire wherewith the judges and lawyers of the realm, being not best affected in religion, do threaten them, and in many cases lett not to pinch and deface them, that upon such cases opened, some convenient authority might be given them from the Queen's Majesty, to continue during her pleasure.

The fourth was, that there were daily lewd, injudicious, and unlawful books in English brought from beyond seas, and are boldly received, read, and kept, and especially in the North, seducing of great numbers of good subjects, the like badness whereof was never suffered in any other

Princess's time, and some streight order might be given to avoid the same, and that it might be considered by the judges, what manner of crime the same is, to maintain such books, made directly against her Majesty's authority. and maintaining a foreign power, contrary to the laws of the realm.

The fifth was, that where a great number of monks. fryars, and such lewd persons, are fled out of Scotland, and do serve in England, especially in the North, as curates of churches, and all such of them as are not found honest and conformable, may be banished out of the realm, for that it appeareth they do sow sedition in the realm, in many places, and now will increase their doings.

The sixth, where sundry having ecclesiastical livings, are on the other side the sea, and from thence maintain sedition in the realm; that livings may be better bestowed to the commodity of the realm, upon good subjects.

The seventh is, that the judges of the realm, having no small authority in this realm, in governance of all property of the realm, might be sworn to the Queen's Majesty. according to the laws of the realm, and so thereby they should for conscience sake maintain the Queen's Majesty's authority.

THE particulars of the third intention to break and avoid

this marriage, or to divert the perils.

First, To break this marriage, considering nothing can likely do it but force, or fear of force, it is thought by some that these means following might occasion the breach of the marriage.

1. That the Earl of Bedford repair to his charge.

2. That the works at Berwick be more advanced.

3. That the garrison be their increased.

4. That all the wardens put their frontiers in order with speed, to be ready at an hour's warning.

- 5. That some noble person, as the Duke of Norfolk, or the Earl of Salop, or such other, be sent into Yorkshire, to be Lieutenant-General in the North.
- 6. That preparations be made of a power, to be in readiness to serve, either at Berwick, or to invade Scotland.
- 7. That presently Lady Lennox be committed to some place, where she may be kept from giving or receiving intelligence.

8. That the Earl of Lennox and his son may be sent for, and required to be sent home by the Queen of Scotts, according to the treaty; and if they shall not come, then to denounce to the Queen of Scotts the breach of the treaty, and thereupor to enter with hostility; by which proceeding, hope is conceived (so the same be done in deeds and not in shews) that the marriage will be avoided, or at the least that it may be qualified from many perils; and whatsoever is to be done herein, is to be executed with speed, whilst she hath a party in Scotland that favoureth not the marriage, and before any league made by the Queen of Scotts with France or Spain.

Some other allows well of all these proceedings, saving of proceeding to hostility; but all do agree in the rest, and also to these particularities following.

That the Earl's lands, upon his refusal, or his son's refusing, should be seized, and bestowed in gift or custody,

as shall please her Majesty, upon good subjects.

10. That all manifest favourers of the Earl, in the North, or elsewhere, he inquired for, and that they be, by sundry means, well looked to.

11. That enquiry be made in the North, who have the stewardship of the Queen's Majesty's lands there, and that no person, deserving mistrust, be suffered to have governance or rule of any of her subjects or lands in the North, but only to retain their fees, and more trusty persons have rule of the same people's lands.

12. That all frequent passages into this realm, to and from Scotland, be restrained to all Scottish men, saving such as have safe-conduct, or be especially recommended from

Mr. Randolph, as favourers of the realm.

13. That some intelligence be used with such in Scotland, as favour not the marriage, and they comforted from

time to time.

- 14. That the Queen's Majesty's household, chamber, and pensioners, be better seen unto, to avoid broad and uncomely speech used by sundry against the state of the realm.
- 15. That the younger son of the Earl of Lennox, Mr. Charles, be removed to some place where he may be forthcoming.
- 16. That considering the faction and title of the Queen of Scotts hath now of long time received great favour, and continued, by the Queen's Majesty's favour herein to the Queen of Scotts and her ministers, and the Lady Catherine, whom the said Queen of Scotts accompted as a competitor unto her in presence of title, it may please the Queen's

Majesty, by some exterior act to shew some remission of her displeasure to the Lady, and to the Earl of Hartford, that the Queen of Scotts thereby may find some change, and her friends put in doubt of further proceeding therein.

17. That whosoever shall be Lieutenant in the North,

Sir Ralph Sadler may accompany him.

18. That with speed the realm of Ireland may be com-

mitted to a new governor.

19. Finally, that these advices being considered by her Majesty, it may please her to choose which of them she liketh, and to put them in execution in deeds, and not to

pass them over in consultations and speeches.

For it is to be assured, that her adversaries will use all means to put their intention in execution. Some by practice, some by force, when time shall serve, and no time can serve so well the Queen's Majesty to interrupt the perils as now at the first, before the Queen of Scotts purposes be fully settled.

## No. XI. (Vol. II. p. 99.)

Randolph to the Earl of Leicester, from Edinburgh, the 31st of July, 1565.

Cott. Lib. Cal. b. ix. fol. 216. An original. May it please your Lordship, I have received your Lordship's letter by my servant, sufficient testimony of your Lordship's favour towards me, whereof I think myself always so assured, that what other mishap soover befalme, I have enough to comfort myself with;

though I have not at this time received neither according to the need I stand, nor the necessity of the service that I am employed in, I will rather pass it, as I may with patience, than trouble your Lordship to be farther suiter for me, when there is so little hope that any good will be done for me. I doubt not but your Lordship hath heard by such information as I have given from hence, what the present state of this country is, how this Queen is now become a married wife, and her husband, the self-same day of his marriage, made a King. In their desires, hitherto, they have found so much to their contentment, that if the rest succeed and prosper accordingly, they may think themselves much happier than there is appearance that they shall be; so many discontented minds, so much misliking of the subjects to have these matters thus ordered, and in

this sort to be brought to pass. I never heard of any marriage; so little hope, so little comfort as men do talk was never seen, at any time, when men should most have shewed themselves to rejoice, if that consideration of her own honour and well of her country had been had as anpertained in so weighty a case. This is now their fear, the overthrow of religion, the breach of amitic with the Queen's Majesty, and the destruction of as many of the nobility as she hath misliking of, or that he liketh to pitch a quarrel To see all these inconveniencys approaching, there are a good number that may sooner lament with themselves and complain to their neighbours, than be able to find remedie to help them; some attempt with all the force they have, but are too weak to do any good; what is required otherways, or what means there is made, your Lordship knoweth; what will be answered, or what will be done therein, we are in great doubt, and though your intent be never so good unto us, yet do we so much fear your delay, that our ruin shall prevent your support when council is once taken. Nothing so needful as speedy execution. Upon the Queen's Majesty we wholly depend; in her Majesty's hands it standeth to save our lives, or to suffer us to perish; greater honour her Majesty cannot have. than in that which lieth in her Majesty's power to do for us; the sums are not great, the numbers of men are not many that we desire: many will dayly be found, tho' this will be some charge; men grow dayly, though, at this time, 1 think her Majesty shall lose but few. Her friends here being once taken away, where will her Majesty find the like? I speak least of that which I think is most earnestly intended by this Queen, and her husband, when by him it was lately said, that he cared more for the Papists in England. than he did for the Protestants in Scotland; if therefore his hopes be so great in the Papists of England, what may your Lordship believe that he thinketh of the Protestants there? for his birth, for his nurritour, for the honour he hath to be of kine to the Queen my mistress, if in preferring those that are the Queen's Majesties worst subjects to those that are her best, he declareth what mind he beareth to the Queen's Majesty's self, any man may say it is slenderly rewarded, and his duty evil forgotten. He would now seem to be indifferent to both the religions, she to use her mass, and he to come sometimes to the preaching: they were married with all the solemnities of the Popish time, saving that he heard

not the mass; his speech and talk argueth his mind, and yet would he fain seem to the world that he were of some religion; his words to all men, against whom he conceiveth any displeasure how unjust soever it be, so proud and spiteful. that rather he seemeth a monarch of the world, than he that, not long since, we have seen and known the Lord Darnley; he looketh now for reverence of many that have little will to gave it him; and some there are that do give it, that think him little worth of it. All honour that may be attributed unto any man by a wife, he hath it wholly and fully: all praises that may be spoken of him he lacketh not from herself; all dignities that she can endue him with, which are already given and granted; no man pleaseth her that contenteth not him; and what may I say more, she hath given over to him her whole will, to be ruled and guided as himself best liketh; she can as much prevail with him in any thing that is against his will, as your Lordship may with me to persuade that I should hang myself: this last dignity out of hand to have been proclaimed King, she would have it deferred untill it were agreed by parliament, or he had been himself 21 years of age, that things done in his name might have the better authority. He would, in no case, have it deferred one day, and either then or never; whereupon this doubt has risen among our men of law, whether she, being clad with a husband, and her husband not twentyone years, any thing without Parliament can be of strength that is done between them: upon Saturday at afternoon these matters were long in debating. And before they were well resolved upon, at nine hours at night, by three heralds. at sound of the trumpet, he was proclaimed King. This was the night before the marriage; this day, Monday, at twelve of the clock, the lords, all that were in the toun. were present at the proclaiming of him again, where no man said so much as Amen, saving his father, that cried out aloud. God save his Queen! The manner of the marriage was in this sort. Upon Sunday in the morning, between five and six, she was conveyed by divers of her nobles to the chapell; she had upon her back the great mourning gown of black, with the great wide mourning hood, not unlike unto that which she wore the doulfull day of the burial of her husband: she was led into the chapell by the Earl of Lennox and Athol, and there was she left untill her husband came, who also was conveyed by the same lords; the minister priests, two, do there receive them; the bands are asked the third time, and an instrument

taken by a notour that no man said against them, or afledged any cause why the marriage might not proceed. The words were spoken, the rings, which were three, the middle a rich diamond, were put upon her finger; they kneel together, and many prayers said over them, she tarrieth out the mass, and he taketh a kiss, and leaveth her there, and went to her chamber, whither within a space she followeth: and being required, according to the solemnity, to cast off her cares and leave aside those sorrowful garments, and give herself to a more pleasant life, after some pretty refusall. more I believe for manner sake than grief of heart, she suffered them that stood by, every man that could approach. to take out a pin, and so being committed to her ladies. changed her garments, but went not to bed, to signify to the world that it was not lust that moved them to marry, but only the necessity of her country, not, if God will, long to leave it destitute of an heir. Suspicious men, or such as are given of all things to make the worst, would that it should be believed, that they knew each other before that they came there; I would not that your Lordship should so believe it, the likelihoods are so great to the contrary, that if it were possible to see such an act done I would not believe it. After the marriage followeth commonly great cheer and dancing: to their dinner they were conveyed by the whole nobility; the trumpets sound; a largess cried; money thrown about the house in great abundance, to such as were happy to get any part; they dine both at one table, she upon the upper hand; there serve her these Earls Atliole sewer, Morton carver, Craufoord cup-bearer; these serve him in like offices, Earls Eglington, Cassels, and Glencairn. After dinner they danced awhile, and then retired themselves till the hour of supper; and as they dined so do they sup; some dancing there was, and so they go to bed. Of all this I have written to your Lordship, I am not oculatus testis to this, but of the verity your Lordship shall not need to doubt, howsoever I came by it. I was sent for to have been at the supper, but like a currish or uncourtly carle I refused to be there; and yet that which your Lordship may think might move me much, to have had the sight of my mistress, of whom these eighteen days by just account I got not a sight. I am, my Lord, taken by all that sort as a very evil person, which in my heart I do well allow, and like of myself the better, for yet can I not find either honest or good that liketh their doings. I leave at this time further to trouble your Lordship, craving pardon for

my long silence, I have more ado than I am able to discharge, I walk now more abroad by night than by day, and the day too little to discharge myself of that which I conceive, or receive in the night. As your Lordship, I am sure, is partaker of such letters as I write to Mr. Secretary, so that I trust that he shall be to this, to save of a little labour, to write the same again, most humbly I take my leave at Edinburgh, the last day of July, 3565.

### No. XII. (Vol. II. p. 102.)

Letter of the Earl of Bedford to the Honourable Sir William Cecil, Knt. her Majesty's Principal Secretary, and one of her Highness's Privy Council.

2nd of Sept. 1565. Paper Office, from the original.

AFTER my hearty commendations, this day at noon Captain Brickwell came hither, who brought with him the Queen's Majesty's letters containing her full resolution, and pleasure for all things he had in charge to give information of, saving that for the aid of the Lords of the

Congregation, there is nothing determined, or at the least expressed in the same letters, and for that purpose received I this morning a letter subscribed by the Duke, the Earl of Murray, Glencarne, and others, craving to be holpen with 300 harquebusyers out of this garrison, for their better defence. And albeit, I know right well the goodness of their cause, and the Queen's Majesty our sovereign's good will, and care towards them; and do also understand that it were very requisite to have them holpen, for that now their cause is to be in this manner decided, and that it now standeth upon their utter overthrow and undoing, since the Queen's party is at the least 5000, and they not much above 1000; besides that the Queen hath harquebusyers, and they have none, and do yet want the power that the Earl of Arguyle should bring to them, who is not yet joined with theirs: I have thereupon thought good to pray you to be a means to learn her Majesty's pleasure in this behalf, what, and how, I shall answer them, or otherwise deal in this matter, now at this their extreme necessity. For, on the one side, lyeth thereupon their utter ruin and overthrow, and the miserable subversion of religion there; and, on the other side, to adventure so great and weighty a matter as this is (albeit it be but of a few soldiers, for a small time), without good waraunte, and thereby to bring, peradventure, upon our heads some wilful warrs,

and in the mean time to leave the place unfurnished (having in the whole but 800), without any grant of new supply for the same ; and by that means also, to leave the marches here the more subject to invasion, while in the mean season new helps are preparing; to this know not I what to say or how to do. And so much more I marvel thereof, as that having so many times written touching this matter, no resolute determination cometh. And so between the writing and looking for answer, the occasion cannot pass, but must needs proceed and have success. God turn it to his glory: but surely all men's reason hath great cause to fear it. Such a push it is now come unto, as this little supply would do much good to advance God's honour, to continue her Majesty's great and careful memory of them, and to preserve a great many noblemen and gentlemen. If it be not now helpen it is gone for ever. Your good will and affection that way I do nothing mistrust, and herein shall take such good advice as by any means I can. I received from these lords two papers inclosed, the effect whereof shall appear unto you. For those matters that Captain Brickwell brought, I shall answer you by my next, and herewith send you two letters from Mr. Randolph, both received this day. By him you shall hear that the Protestants are retired from Edenborough, further off. So I hope your resolution for their aid shall come in time, if it come with speed, for that they will not now so presently need them; and so with my hearty thanks commit you to God. From Berwick this 2nd of Sept. 1565.

## No. XIII. (Vol. II. p. 102.)

## The Queen to the Earl of Bedford.

12th Sept. 1565. Paper Office. Upon the advertizements lately received from you, with such other things as came also from the Lord Scrope and Thomas Randolph, and upon the whole matter well considered, we have thus determined. We will, with all the speed

that we can, send to you 3000l. to be thus used. If you shall certainly understand that the Earl of Murray hath such want of money, as the impresting to him of 1000l. might stand him in stead for the help to defend himself, you shall presently let him secretly to understand, that you will, as of yourself, let him have so much, and so we will that you let him have, in the most secret sort that you can, when the

said sum shall come to you, or if you can, by any good means advance him some part thereof beforehand.

The other 2000l. you shall cause to be kept whole, unspent, if it be not that you shall see necessary cause to imprest some part thereof to the now numbers of the 600 footmen and one 100 horsemen; or to the casting out of wages of such workmen, as by sickness, or otherwise, ought to be discharged. And where we perceive, by your sundry letters, the earnest request of the said Earl of Murray and his associates, that they might have, at the least, 300 of our soldiers to aid them. And that you also write, that tho' we would not command them to give you aid, yet if we would wink at your doing herein, and seem to blame you for attempting such things, as you with the help of others should bring about, you doubt not but that things would do well: you shall understand for a truth, that we have no intention. for many respects, to maintain any other Prince's subjects, to take arms against their sovereign; neither would we willingly do any thing to give occasion to make wars betwixt us and that Prince, which has caused us to forbear, hitherto, to give you any power to let them be aided with any men. But now, considering we take it, that they are pursued, notwithstanding their humble submission and offer to be ordered and tried by law and justice, which being refused to them, they are retired to Dumfrese, a place near our west marches, as it seemeth there to defend themselves. and adding thereunto the good intention that presently the French King pretendeth, by sending one of his to join with some one of ours, and jointly to treat with that Queen, and to induce her to forbear this manner of violent and rigorous proceedings against her subjects, for which purpose the French ambassador here with us has lately written to that Queen, whereof answer is daily looked for: to the in tent in the mean time the said lords should not be oppressed and ruined for lack of some help to defend them, we are content and do authorize, if you shall see it necessary for their defence, to let them (as of your own adventure, and without notifying that you have any direction therein from us) to have the number of 300 soldiers, to be taken, either in whole bands, or to be drawn out of all your bands, as you shall see cause. And to cover the matter the better, you shall send these numbers to Carlisle, as to be laid there in garrison, to defend that march, now in this time that such powers are on the other part drawing to those frontiers, and so from thence as you shall see cause to direct of, the same

numbers, or any of them, may most covertly repair to the said lords, when you shall expressly advertize, that you send them that aid only for their defence, and not therewith to make war against the Queen, or do any thing that may offend her person; wherein you shall so precisely deal with them, that they may perceive your care to be such as if it should otherwise appear, your danger should be so great, as all the friends you have could not be able to save you towards us. And so we assure you our conscience moveth us to charge you so to proceed with them; for otherwise than to preserve them from ruin, we do not yield to give them aid of money or men: And yet we would not that either of these were known to be our act, but rather to be covered with your own desire and attempt.

### No. XIV. (Vol. II. p 110.)

Randolph to Cecil, from Edinburgh, 7th Feb. 1565-6.

My humble duty considered; what to write An oriof the present state of the country I am so unginal. certain, by reason of the daily alterations of men's minds, that it maketh me much slower than otherwise I would. Within these few days there were some good hope, that this Queen would have shewed some favour towards the lords, and that Robert Melvin should have returned unto them with comfort upon some conditions. Since that time, there are come out of France Clernau by land, and Thorneton by sea; the one from the Cardinal, the other from the Bishop of Glasgow. Since whose arrival neither can there be good word gotten, nor appearance of any good intended them, except that they be able to perswade the Queen's Majesty, our sovereign, to make her heir apparent to the croun of England. I write of this nothing less than I know that she hath spoken. And by all means that she thinketh the best doth travaile to bring it to pass. There is a band lately devised, in which the late Pope, the Emperor, the King of Spain, the Duke of Savoy, with divers Princes of Italy, and the Queen-mother suspected to be of the same confederacy, to maintain Papistry throughout Christendom; this band was sent out of France by Thorneton, and is subscribed by this Queen, the copy thereof remaining with her, and the principal to be returned very shortlie, as I hear, by Mr. Stephen Willson, a fit minister for such a devilish devise; if the coppie hereof may be gotten, that shall be sent as I conveniently may. Monsieur Rambollet came to this toun upon Monday, he spoke that night to the Queen and her husband, but not long; the next day he held long conferences with them both, but nothing came to the knowledge of any whereof they intreated. I cannot speak with any that hath any hope that there will be any good done for the lords by him, though it is said that he hath very good will to do so to the uttermost of his power. He is lodged near to the court, and liveth upon the Queen's charges. Upon Sunday the order is given, whereat means made to many to be present that day at the mass. Upon Candlemass-day there carried their candles, with the Queen, her husband, the Earle of Lennox and Earle Athole; divers other lords have been called together and required to be at the mass that day, some have promised, as Cassels, Montgomerie, Seton, Cathness. Others have refused, as Fleming, Levingston, Lindsay, Huntly, and Bothel; and of them all Bothel is the stoutest, but worst thought of; it was moved in council that mass should have been in St. Giles church, which I believe was rather to tempt men's minds, than intended indeed: She was of late minded again to send Robert Melvin to negotiate with such as she trusteth in amongst the Queen's Majesty's subjects, of whose good willis this way I trust that the bruit is greater than the truth, but in these matters, her Majesty is too wise not in time to be ware, and provide for the worst; some in that country are thought to be privie unto the bands and confederacie of which I have written, whereof I am sure there is some things, tho' perchance of all I have not heard the truth; in this court divers quarles, contentions, and debates, nothing so much sought as to maintain mischief and disorder. David yet retaineth still his place, not without hearty-grief to many, that see their sovereign guided chiefly by such a fellow; the Queen hath utterly refused to do any good to my Lord of Argyll, and it is said that shall be the first voyage that she shall make after she is delivered of being with child; the bruit is common that she is, but hardly believed of many, and of this, I can assure you, that there have of late appeared some tokens to the contrary.

### No. XV. (Vol. II. p. 117.)

Part of a Letter from the Earl of Bedford and Mr. Thos. Randolph to the Lords of the Council of England from Barwick, 27th of March, 1566. An Original in the Cotton Library, Caligula, b. 10. fol. 372.

May it please your Honours,

27 March. HERING of so maynie matters as we do, and 1566. fyndinge such varietie in the reports, we have myche ado to decerne the veritie; which maketh us the slower and loother to put any thing in wrytinge to the entente we wold not that your Honours, and by you the Queen's Majestie, our sovereigne, should not be advertised but of the verie trothe as we can possible. To this end we thought good to send up Captain Carewe, who was in Edinbourge at the tyme of the last attemptate, who spoke there with diverse, and after that with the Queen's self and her husband, conforme to that, which we have learned by others and know by this reporte, we send the same, confirmed by the parties self, that were there present and assysters unto these that were executors of the acte.

This we funde for certain, that the Queen's husband being entered into a vehement suspicion of David, that by hym some thynge was committed, which was most agaynst the Queen's honour, and not to be borne of his perte, fyrste communicated his mynde to George Duglas, who fynding his sorrowes so great sought all the means he coulde to put some remedie to his grieff; and communicating the same unto my Lord Ruthen by the King's commandment, no other wave could be found then that David should be taken out of the waye. Wherein he was so carnest and daylye pressed the same, that no reste could be had untyll it was put in execution. To this that was found good, that the Lord Morton, and Lord Lindsaye should be made privie to th' intente, that their might have their friends at hande, vf neade required; which caused them to assemble so mayny, as their thought sufficient against the tyme, that this determination of theirs should be put in executione; which was determined the ixth of this instante 3 daies afore the parliament should begyne, at which time the sayde lordes were assured that the Erles Argyle, Morraye, Rothes and their complyces shold have been forfeited, of the King could not be persuaded through this means to be their friends; who for the desyre he hade that this intent should take effect th' one waye was contente to yielde, without all difficultie to tother, with this condition, that theie should give their consents, that he might have the crowne matrimonial. He was so impatient to see these things he saw, and were daylye brought to his eares, that he dayle pressed the sayde Lord Ruthen, that there might be no longer delaye; and to the intent that myght be manifeste unto the world that he approved the acte, was contente to be at the doing of that himself.

Upon Saturdaye at night neire unto viii of the clock the King conveyeth himself, the Lord Ruthen, George Duglass, and two others, throwe his own chamber by the privy stayers up to the Queen's chamber, going to which there is a cabinet about XII foot square; in the same a little low reposing bed and a table, at the which theyr were sitting at the supper the Queene, the Lady Argile, and David with his capp upon his head. Into the cabinet there cometh in the King and Lord Ruthen, who willed David to come forth, saying, that was no place for him. The Queen said, that it was her will. Her howsband answerede, that yt was against her honour. The Lord Ruthen said, that he should lerne better his dutie, and offering to have taken him by the arm, David took the Queen by the blychtes of her gown, and put himself behind the Queen, who wolde gladlee have saved him: But the King having loosed his hand, and holding her in his arms, David was thrust out of the cabinet throw the bed-chamber into the chamber of presens, whar were the Lord Morton, Lord Lindsey, who intending that night to have reserved him, and the next day to hang him, so many being about him, that bore him evil will, one thrust him into the boddie with a dagger, and after him a great many others, so that he had in his bodie above It is told for certayne, that the Kinges own dagger was left sticking in him. Wheather he stuck him or not we cannot here for certayn. He was not slavne in the Queen's presens, as was said, but going down the stayres out of the chamber of presens.

There remained a long tyme with the Queen her howsband and the Lord Ruthen. She made, as we here, great intercession that he shold have no harm. She blamed greatlee her howsband that was the actor of so foul a deed. It is said that he did answer, that David had more companie of her boddie then he for the space of two months; and therefore for her honour and his own contentment he gave his consent that he should be taken away. "It is not

(saythe she) "the woman's part to seek the husband." and therefore in that the fault was his own. He said that when he came, she either wold not or made herself sick. "Well," saythe she, " you have taken your last of me and your farewell." Then were pity, sayth the Lord Ruthen, he is your Maicsty's husband and must yield dutie to each "Why may I not," saythe she, "leave him as well as your wife did her husband?" Others have done the like. The Lord Ruthen said that she was lawfully divorced from her husband, and for no such cause as the King found himself greve. Besydes this man was mean, basse, enemie to the nobility, shame to her, and destruction to herself and country. "Well," saith she, "that shall be dear blude to some of you, yf his be spylt." God forbid, sayth the Lord Ruthen; for the more your Grace showe yourself offended. the world will judge the worse.

Her husband this tyme speaketh litle, herself continually weepeth. The Lord Ruthen being ill at ease and weak calleth for a drink, and saythe, "This I must do with your Majesties pardon," and persuadeth her in the best sort he could, that she would pacify herself. Nothing that could

be said could please her.

In this mean time there arose a nombre in the court; to pacify which there went down the Lord Ruthen, who went streyt to the Erles Huntly, Bothwell, and Atholl, to quiet them, and to assure them for the King that nothing was intend against them. These notwithstanding taking fear, when their heard that my Lord of Murray would be there the next day, and Argile meet them, Huntly and Bothwell both get out of a window and so depart. Atholl had leave of the King with Flysh and Glandores (who was lately called Deysley the person of Owne) to go where they wold, and bring concorde out of the court by the Lord of Lidington. Their went that night to such places where they thought themselves in most sauftie.

Before the King leaft talk with the Queen, in the hering of the Lord Ruthen she was contents that he shold lie with her that night. We know not how he \*\* himself, but came not at her, and excused hymself to his friends, that he was so sleepie, that he could not wake in due

season.

There were in this companie two that came in with the King: the one Andrewe Car of Fawdenside, whom the Queen sayth would have stroken her with a dagger, and one Patrick Balentine, brother to the justice-clerk, who

also her Grace sayth, offered a dag against her belly with the cock down. We have been earnestly in hand with the Lord Ruthen to know the varitie; but he assoureth us of the contrarie. There were in the Queen's chamber the Lord Robert, Arthur Arskin, one or two others. They at the first offering to make a defence, the Lord Ruthen drawd his dagger, and 4 mo weapons then, that were not drawn nor seen in her presens, as we are by this Lord assured.

The letter afterwards gives an account of the flight to Dunbar Castle, whither resorted unto the Lords Huntly and Bothwell: That the Earl of Morton and Lord Ruthven find themselves left by the King for all his fair promises, bonds, and subscriptions. That he had protested before the council, that he was never consenting to the death of David, and that it is sore against his will: "That of the great substance David had there is much spoken, some say in gold to the value of 11m£. His apparel was very good, as it is said, 28 pair of velvet hose. His chamber well furnished. armour, dagger, pystoletts, harquebuses, 22 swords. Of all this nothing spoyled or lacked saving 2 or 3 dagger. He had the custody of all the Queen's letters, which all were delivered unlooked upon. We hear of a juill, that he had hanging about his neck of some price, that cannot be heard of. He had upon his back when he was slayn, a night gown of damask furred, with a satten dublet, a hose of russet velvet."]

### No. XVI. (Vol. II. p. 124.)

Part of a Letter from Randolph to Cecil, Jan. 16. 1565-6.

—— I CANNOT tell what misliking of late there hath been between her Grace and her husband, he presseth earnestly for the matrimonial crown, which she is loth hastily to grant, but willing to keep somewhat in store, until she know how well he is worth to enjoy such a sovereignty; and therefore it is thought that the Parliament for a time shall be deferred, but hereof I can write no certainty.

# From Mr. Randolph's Letter to Secretary Cecil.

4th April,
1566. Paper Office,

per Office,

The justice-clerk in hard terms, more for his brother's cause than any desert, and as far as I can hear the King of all other in worst, for nei-

from the original. ther that the Queen good opinion of him for attempting of any thing that was against her will, nor the people that he hath denied so manifest a

matter, being proved to be done by his commandment, and now himself to be the accuser and pursuer of them that did as he willed them. This Scott, that was executed, and Murray that was vesterday arraigned, were both accused by It is written to me, for certain, by one that upon Monday last spoke with the Queen, that she is determined that the House of Lennox shall be as poor in Scotland as ever it was. The Earl continueth sick, sore troubled in mind; he staith in the abby, his son has been once with him. and he once with the Queen, since she came to the castle. The Queen hath now seen all the covenants and bands that passed between the King and the lords, and now findeth that his declaration, before her and council, of his innocency of the death of David, was false; and grievously offended that, by their means, he should seek to come to the crown matrimonial.

### Part of a Letter from Randolph to Cecil, from Berwick, 25 April, 1565.

There is continually very much 'speech of the discord between the Queen and her husband, so far that, that is commonly said and believed of himself, that Mr. James 'Thornton is gone to Rome to sue for a divorce between them. It is very certain that Malevasier had not spoken with him within these three days. He is neither accompany'd nor looked upon of any nobleman: attended upon by certain of his own servants, and six or seven of the guard; at liberty to do, and go where and what he will, they have no hope yet among themselves of quietness.

—— David's brother, named Joseph, who came this way with Malevasier, unknown to any man here, is become secretary in his brother's place.

## No. XVII. (Vol. II. p. 127.)

The Earl of Bedford to Cecil, 3d August, 1566.

THE Queen and her husband agree after the old manner, or rather worse. She eateth but very sellom with him, lieth not, nor keepeth company with him, nor loveth any such as love him. He is so far out of her books, as at her going

out of the castle of Edinburgh, to remove abroad, he knew nothing thereof. It cannot for modesty, nor with the honour of a Queen, he reported what she said of him. One Hickman, an English merchant there, having a water spaniel, which was very good, gave him to Mr. James Melvil, who afterwards, for the pleasure which he saw the King have in such kind of dogs, gave him to the King. The Queen thereupon fell marvellously out with Melvil, and called him dissembler and flatterer, and said she could not trust oue, who would give any thing to such a one as she loved not.

### The Earl of Bedford to Cecil, Aug. 8.

The disagreement between the Queen and her husband continueth, or rather increaseth. Robert Melvil drawing homewards, within twelve miles of Edinburgh, could not tell where to find the Queen; sith which time she is come to Edinburgh, and had not twelve horses attending on her. There was not then, nor that I can hear of since, any lord, baron, or other nobleman in her company. The King her husband is gone to Dumfermling, and passeth his time as well as he may; having at his farewell such countenance as would make a husband heavy at the heart.

Sir John Forster to Cecil, 8th Sept. from Berwick.

The Queen hath her husband in small estimation, and the Earl of Lennox came not in the Queen's sight since the death of Davy.

#### Sir John Forster to Cecil, 11th Dec.

The Earl of Bothwell is appointed to receive the ambassadors, and all things for the christening are at his Lordship's appointment, and the same is scarcely well liked of the nobility, as is said. The King and Queen is presently at Craigmillar, but in little greater familiarity than he was all the while past.

### Advertisements out of Scotland from the Earl of Bedford.

August 1566. Paper Office. From the original.

That the King and Queen agreed well together two days after her coming from ——, and after my Lord of Murray's coming to Edinburgh, some new discord has happened. The Queen hath declared to my Lord of Murray that the King bears him evil will, and has said to

her that he is determined to kill him, finding fault that she doth bear him so much company: and in like manner hath willed my Lord of Murray to spiere it at the King, which he did a few nights since in the Qucen's presence, and in the hearing of divers. The King confessed, that reports were made to him, that my Lord of Murray was not his friend, which made him speak that thing he repented; and the Queen affirmed, that the King had spoken such words unto her, and confessed before the whole house, that she could not be content that either he or any other should be unfriend to my Lord of Murray. My Lord of Murray enquired the same stoutly, and used his speech very modestly, in the mean time the King departed very grieved; he cannot bear that the Queen should use either familiarity with man or woman. and especially the ladies of Arguile, Murray, and Marre, who keep most company with her. My Lord of Murray and Bothwell have been at evil words for the L. of Ledington, before the Queen, for he and Sir James Balfoure had new come from Ledington, with his answer upon such heads or articles as Bothwell and he should agree upon. which being reported to the said Earl in the Queen's presence, made answer, that ere he parted with such lands as was desired, he should part with his life. My Lord of Murray said stoutly to him, that twenty as honest men as he should lose their lives ere he reafte Ledington. The Queen spake nothing, but heard both; in these terms they parted. and since, that I hear of, have not met. The Queen after her hunting came to Edinburgh, and carryeth the Prince thence to Stirling with her. This last Saturday was executed a servant of the Lord Ruthven's, who confessed that he was in the cabinet, but not of council of the fact. The Queen hath also opened to my Lord of Murray, that money was sent from the Pope, how much it was, and by whom, and for what purpose it was brought.

# No. XVII. (Vol. II. p. 139.)

Part of a Letter from Elizabeth to Mary, Feb. 20, 1569.
A copy interlined by Cecil. It contains an answer to a complaining letter of Mary's upon the imprisoning of the Bishop of Ross.

--- AFTER this [i. e. Mary's landing in Scotland] how patiently did I bear with many vain delays in not ratifying the treaty accorded by your own commis-

sioners, whereby I received no small unkindness, besides the manifold causes of suspicion that I might not hereafter trust to any writings. Then followed a hard manner of dealing with me, to intice my subject and near kinsman. the Lord Darnly, under colour of private suits for land, to come into the realm, to proceed in treaty of marriage with him without my knowledge, yea to conclude the same without my assent or liking. And how many unkind parts accompany'd that fact, by receiving of my subjects that were base runnagates and offenders at home, and enhansing them to places of credit against my will, with many such like. I will leave, for that the remembrance of the same cannot but be noysome to you. And yet all these did I as it were suppress and overcome with my natural inclination of love towards you; and did afterwards gladly, as you know, christen your son, the child of my said kinsman, that had before so unloyally offended me, both in marriage of you, and in other undutiful usages towards me his sovereign. How friendly also dealt I by messages to reconcile him, being your husband, to you, when others nourished discord betwixt you, who as it seemed had more power to work their purposes, being evil to you both, than I had to do you good, in respect of the evil I had received. Well I will overpass your hard accidents that followed for lack of following my council. And then in your most extremity. when you was a prisoner indeed and in danger of your life from your notorious evil willers, how far from my mind was the remembrance of any former unkindness you had shewed Nay, how void was I of respect to the designs which the world had seen attempted by you to my crown, and the security that might have ensued to my state by your death, when I finding your calamity to be great, that you were at the pit's brink to have miserably lost your life. did not only intreat for your life, but so threatned some as were irritated against you, that I only may say it, even I was the principal cause to save your life.

### No. XIX. (Vol. II. p. 154.)

Letter of Q. Elizabeth to Q. of Scots. Thus marked on the back with Cecil's hand.—Copia Literarum Regiæ Majestatis ad Reginam Scotorum VIII Aprilis.

Paper Office.

MADAME, vous ayant trop molestè par M. de Crocq, je n'eusse eu si peu de consideration de vous fascher de cette lettre, si les liens de cha-

ritè vers les ruinez, et les prieres des miserables ne m'v contraignassent. Je entens que un cdit a été divulgué de par vous, Madame, que ung chascun, que veult justifier que ons esté les meurtriers de votre feu mari, et mon feu cousin. viennent a le faire le xume de ce mois. La quelle chose, comme c'est plus honorable et necessaire, qui en tel cas se pourra faire, ne y estant caché quelque mistere ou finesse, ainsi le pere et amis du mort gentelhomme m'ont humblement requis, que je vous priasse de prolongue le jour, pourc e qu'ilz cognoissent que les iniques se sont combinés par force de faire ce que par droict ils ne pourront pas faire; partant, je ne puis mais sinon pour l'amour de vous meme, a qui il touche le plus, et pour la consolation des innocens, de vous exhorter le leur conceder cette requeste, laquelle, si elle les seroit nié, vous tourneroit grandement en soupçon, de plus que j'espere ne pensez, et que ne voudriez volontiers ouyr. Pour l'amour de Dieu, Madame. uscz de telle sincerité et prudence en ce cas qui vos touche de si pres, qui tout le monde aye raison, de vous livrer comme innocente d'ung crime si enorme, chose que si ne fistes, seriez dignement esbloye hors de rancz de Princesses. et non sans cause faite opprobre de vulgaire, et plutot que cela vous avienne, je vous souhaiterois une sepulture honorable, qu'une vie maculeé; vous voiez, Madame, qui je vous traite comme ma fille, et vous promets, qui si j'en eusse, ne luy souhaiterois mieux, que je vous desire, comme le Seigneur Dieu me porte tesmoignage, a qui je prie de bon cœur de vous inspirer a faire ce qui vous sera plus a honneur, et a vos amis plus de consolation, avec mes tres cordialles recommendations comme a icelle a qui se souhaite le plus de bien, qui vous pourra en ce monde avenir. West. ce 8 jour de Janvier \* en haste.

### No. XX. (Vol. II. p. 165.)

Account of the sentence of divorce between the Earl of Bothwell and Lady Jean Gordon his wife. From a manuscript belonging to Mr. David Falconer, advocate. Fol. 455.

Upoun the 29 of Apryle 1567, before the Richt Hon. Mr. Robert Maitland, dean of Aberdene, Mr. Edward Henryson, doctor in the laws, two of the senators of the college of justice, Mr. Clement Little, and Mr. Alexander Syme, advocattis, commissers of Edin; compered Mr. Henry Kin-

<sup>\*</sup> A mistake in the date corrected with Cecil's hand VIII Aprilis.

rosse, procurator for Jean Gourdonne Countess of Bothwell. constitute be her for pursewing of ane proces of divorcement intendit by her contra James Erle Bothwel her husband for adultry, committed be him with Bessie Crawfurde the pursuer's servant for the time; and sicklyke, for the said Erle, compeared Mr. Edmond Hay, who efter he had pursued and craved the pursuer's procurator's oath de calumnia, if he had just caus to pursew the said action, and obtained it, denyed the libell, and the said Mr. Harrie took the morne, the last day of Apryle, to prove the same pro prima. The quhilk day, having produced some witnesses, he took the next day, being the I of May, to do farther dili-Upon the quhilk 1 of May, he produced some moe witnesses, and renounced farther probationne. quhilk, he desired a term to be assigned to pronounce sentence. To whom the said commissars assigned Satterday next, the 3 of May, to pronounce sentence therein, secundum alegata et probata, quilk accordingly was given that day in favour of the pursewar.

At the same time there was another process intendit be the Erl of Bothwell contr his lady, for to have their marriage declared nul, as being contracted against the canons, without a dispensation, and he and his lady being within degrees defendand, viz. ferdis a kin, and that wyse for expeding of this proces, there was a commissionne grantit to the Archbishop of St. Androis to cognosce and determine it, and Rot, Bishop of Dunkeld, William Bishop of Dunblane, Mr. Andro Craufurd, chanon in Glasgow and parson of Egelshame, Mr. Alexander Creichtoun, and Mr. George Cooke, Chancellor of Dunkeld, and to Mr. Johne Manderstoune, chanon in Dunbar and prebendar of Beltoune, or any ane of them. This commissione is datit 27th Aprile, 1567, was presented to two of the saids commissioners, viz. Mr. Andr. Crawfurd, and Mr. John Manderstoune, on Satterday 3 May, by Mr. Thomas Hepburne, parson of Auldhamstocks, procurator for the Erle of Bothwell, who acepted the delegationne, and gave out their citation by precept, directed Decano Christianitatis de Hadingtoune, nec non vicario seu curato eccle: parochiæ de Creichtoune, seu cuicung; alteri cappellano debiti requisitis, fer summoning, at the said Erle's instance, both of the lady personally if she could be had, or otherways at the parosche kerk of Creichtoune the time of service, or at her dwelling place before witnesses, primo, secundo, tertio et peremptorie, unico tamen contextu protuplice edicto. And likeways to be witnesses in the said matter, Alex. Bishop of Galloway, who did marry the said Erle and his lady in Halerud-hous kirk, in Feb. 1565, Sir John Bannatyne, of Auchnole justiceclerk, Mr. Robert Creichtoun of Elliok, the Queen's advocate, Mr. David Chalmers, provost of Creichtoun and chancellor of Ross, Michael ---, abbot of Melross, and to compear before the said judges or any one of them in St. Geil's kirk in Edr on Monday the 5 of May, be themselves, or their procurators. Upon the said 5 day, Mr. John Manderstoun, one of the judge's delegat only being present, compeared the same procurators for both the parties that were in the former proces, Mr. Edmund Hay ( ) and some of the witnesses summoned, produced and received for proving the same. The said procurator renounced farder probatioune, and the judge assigned the morne, the 6th of May, ad publicandum producta, nempe depositiones ipsorum testium. The quhilk day, post publicatas depositiones prædictas, Mr. Hen. Kinrosse, procurator for the lady, instanter object objectiones juris generaliter, contra producta, insuper renunciavit ulteriori defensioni; proinde conclusa de consensu procuratorum hinc inde causa, judex prædictus statuit crastinum diem pro termina, ad pronunciandum suam sententiam definitivam, ex deductis coram co, in præsenti causa et processu. Conform hereunto, on Wednesday the 7th of May, the said judge gave out his sentence in favour of the Erle, declaring the marriage to be, and to have been null from the beginning, in respect of their contingence in blood, which hindered their lawful marriage without a dispensation obtained of befoir.

# No. XXI. (Vol. II. p. 169.)

#### A Letter from England concerning the murder of King Henry Darnley.

E. of Morton's Archieves.
Bundle B.
No. 25.
Having the commodity of this bearer Mr.
Clark, I tho't good to write a few words unto you. I have recd some writs from you, and some I have seen lately sent to others from you, as namely to the Earl of Bedford of the 16th of May. I have participat the contents such as I thought meet. 'This mekle I can assure you, the intelligence give hithere by the French was untrue, for there was not one Papist nor Protestant which

.did not consent that justice should be done, be the Queen my sovns aid and support, against such as had committed that abominable ill murder in your country; but to say truth, the lack and coldness did not rise from such as were called to council, but from such as should give life and execution thereunto. And further, I assure you, I never knew no matter of estate proponed which had so many favourers of all sorts of nations as this had; yea, I can say unto you, no man promoted the matter with greater affection than the Spanish ambassador. And sure I am that no man dare openly be of any other mind, but to affirm that whosoever is guilty of this murder, handfasted with advoutre, is unworthy to live. I shall not need to tell you, which be our letts, and stayes from all good things here; you are acquainted with them as well as I. Neds I must confess, that howsoever we omit occasions of benefit, honour, and surety, it behoveth your whole nobility, and namely such as before and after the murder were deemed to allow of Bodwell, to prosecute with sword and justice the punishment of those abominable acts, though we lend you but a cold aid; and albeit you and divers others, both honourable and honest, be well known to me, and sundry others here, to be justifiable in all their actions and doings; yet think not the contrary but your whole nation is blemished and infamit by these doings which lately passed among you. shall do I know not, neither do I write unto you assuredly, for we be subject unto many mutations, and yet I think we shall either aid you, or continue in the defence and safeguard of your Prince, so as it appear to us that you mean his safeguard indeed, and not to run the fortune of France, which will be your own destruction if you be unadvised. I know not one, no not one of any quality or estate in this country, which does allow of the Queen your sovereign, but would gladly the world were rid of her, so as the same were done without farther slander, that is to say by ordinary justice. This I send the 23d of May.

# No. XXII. (Vol. II. p. 175.)

Part of a Letter from Sir Nicolas Throkmorton to Cecil, 11th of July, 1567, from Berwick.

An Original. Paper Office.

Sir, your letter of the 6th of July, I received the 10th, at Berwick. I am sorry to see that the Queen's Majesty's disposition altereth 2 A 3

not towards the lords, for when all is done, it is they which, must stand her more in stead than the Queen her cousin, and will be better instruments to work some benefite and quietness to her Majesty and her realm, that the Queen of Scotland, which is void of good fame.

#### A Letter from Sir Nicolas Throkmorton to Cecil, from Fastcastle, 12th of July, 1567.

SIR, as you might perceive by my letter of the Paper Of-11th July, I lodged at Fastcastle that night acfice. companyed with the Lord Hume, the Lord of Ledington, and James Melvin, where I was entreated very well according to the state of the place, which is fitter to lodge prisoners than folks at liberty; as it is very little, so it is very strong. By the conference I have had with the Lord of Ledington, I find the lords his associates and he hath left nothing unthought of, which may be either to thir danger or work them sucrty, wherein they do not forget what good and harme France may do them, and likewise they consider the same of England: but as farr as I can perceive, to be plain with yow, they find more perril to grow unto them through the Queen's Majesty's dealing, than either they do by the French, or by any contrary faction amongest themselves, for they assure themselves the Queen will leave them in the bryers if they run her fortoun; and though they do acknowledge great benefit as well to them as to the realm of England, by her Majesty's doings at Leith, whereof they say mutually her Majesty and both the realms have received great fruit; yet upon other accidents which have chanced since, they have observed such things in her Majestys doings as have ended to the danger of such as she hath dealt withal, to the overthrow of your own designments, and little to the suerty of any party; and upon these considerations and discourses at length, methinketh I find a disposition in them, that either they mind to make their bargain with France, or else do deal neither with France nor yow, but to do what they shall think meet for their state and suerty, and to use their remedys as occation shall move them; meaning neither to irritate France nor England, untill such time as they have made their bargain assuredly with one of vow; for they think it convenient to proceed with yow both for a while pari passu, for that was my Lord of Ledington's terms. I do perceave they take the matter very unkindly, that no better answer is made to the letter which the Lords did send to her Majesty, and

likewise that they hear nothing from yow to their satisfaction. I have answered as well as I can, and have alledged their own proceedings so obscurly with the Queen and their uncertainty hath occationed this that is yet happened. and therefore her Majesty hath sent me to the end I may inform her thoroughly of the state of the matters, and upon the declaration of their minds and intents to such purposes as shall be by me proposed on her Majestys behalf unto them, they shall be reasonably and resolutely answered. At these things the Lord of Ledington smiled and shook his head, and said it were better for us vow would let us alone, than neither to do us nor vourselves good, as I fear me in the end that will prove: Sr, if their be any truth in Ledington, Le Croca is gone to procure Ramboilet his coming hither, or a man of like quality, and to deliver them of their Queen for ever, who shall lead her life in France in an abbey reclused, the Prince at the French devotion, the realm governed by a council of their election of the Scottish nation, the forts committed to the custody of such as shall be chosen amongst themselves. As yet I find no great likelihood that I shall have access to the Queen: it is objected they may not so displease the French King, unless they were sure to find the Queen of England a good friend; and when they once by my access to the Queen have offended the French, then they say yow will make your profit thereof to their undoing; and as to the Queen's liberty, which was the first head that I proposed, they said that thereby they did perceive that the Queen wants their undoing, for as for the rest of the matters it was but folly to talk of them. the liberty going before; but said they, if yow will do us no good, do us no harm, and we will provide for ourselves. In the end they said, we shall refuse our own commodity. before they concluded with any other, which I should hear of at my coming to Edin'; by my next I hope to send yow the band concluded by Hamiltons, Argyll, Huntly, and that faction, not so much to the prejudice of the Lords of Edin<sup>r</sup>, as that which was sent into France. Thus having no more leisure, but compelled to leap on horseback with the lords to go to Edin', I humbly take my leave of from Fastcastle the 12th of July, 1567.

To Sir Nicolas Throkmorton, being in Scotland. By the Queen, the 14th of July, 1567.

TRUSTY and well beloved we greet you well; Paper Ofthough we think that the causes will often fice. change upon variety of accidents, yet we think for sundry respects, not amiss, that as yow shall deal with the Lords having charge of the young Prince for the committing of him into our realm, so shall yow also do well, in treaty with the Queen, to offer her that where her realm appeareth to be subject to sundry troubles from time to time, and thereby (as it is manifest) her son cannot be free, if she shall be contented that her son may enjoy sucrty and quietness within this our realm, being so near as she knows it is; we shall not faill to yield her as good sucrty therein for her child, as can be devised for any that might be our child born of our own body, and shall be glad to shew to her therein the trew effect of nature; and herein she may be by yow remembred how much good may ensue to her son to be nourished and acquainted with our country: and therefore, all things considered, this occation for her child were rather to be sought by her and the friends of him, than offered by us: and to this end, we mean that yow shall so deal with her, both to stay her indeed from inclining to the French practise, which is to us notorious, to convey her and the Prince into France, and also to avoid any just offence that she might hereafter conceive, if she should hear that we should deal with the Lords for the Prince.

Sir Nicolas Throkmorton to Queen Elizabeth, 14th July, 1567, from Edinburgh.

It may please your Majesty to be advertised, An Origi-I did signifie unto Mr. Secretary by my letters nal. Paof the 11th and 12th of July, the day of mine per Office. entry into Scotland, the causes of my stay, my lodging at Fastcastle, a place of the Lord Hume's, where I was met by the said Lord and by the Lord Lidington, and what had passed in conference betwixt us, whilest I was at the said Fastcastle. Since which time, accompanyed with the Lords aforesaid, and with 400 horses by their appointment for my better conduct, I came to Edin'. the 12th of this present. The 13th being Sunday appointed for a solemne communion in this town, and also a solemne fast being published, I could not have conference with the

Lords which he assembled within this town, as I desired, that is to say, the Earls of Athole and Morton, the Lord Hume, the Lord of Lidington, Sir James Balfour, captain of the castle, Mr. James M'Gill, and the President of the Session.

Nevertheless I made means by the Lord of Lidington that they would use no protracte of time in mine audience. so did I likewise to the Earle of Morton, whom I met by chance; I was answered by them both, that albeit the day were destined to sacred exercises, such as were there of the council would consult upon any moyen touching my access unto them and my conference with them, and said also, that in the afternoon either they would come to me, or I should hear from them. About 4 of the clock in the afternoon, the said 13th day, the Lord of Lidington came to my lodgings, and declared unto me, on the behalf of the lords and others, that they required me to have patience. though they had defferred my conference with them, which was grounded principally upon the absence of the Earles of Mar and Glencairn, the Lords Semple, Crighton, and others of the council, saying also that they did consider the matters which I was on your behalf to treate with them of, were of great importance, as they could not satisfy nor conveniently treate with me, nor give me answer without the advice of the lords, and others their associates: the Lord of Lidington also said unto me, that where he perceived, by his private conference with me in my journy hitherwards, that I pressed greatly to have speedy access to the Queen their sovereign, he perceived by the lords and others which were here, that in that matter there was great difficulty for many respects, but specially because they had refused to the French ambassador the like access, which being granted unto me, might greatly offend the French, a matter which they desired and intended to eschew: for they did not find by your Majesty's dealings with them hitherto, that it behaved them to irritate the French King, and to lose his favour and good intelligence with him. I answered, that as to their refusal made unto the French ambassador, Monsieur de Ville Roye was dispatched forth of France before these accidents here happened, and his special errand was to impeach the Queen's marriage with the Earle of Bothel (for so indeed, since my coming hither I learned his commission tended to that end, and to make offer to the Queen of another marriage); and as to Monsieur de Crocq, he could have no order forth of France concerning these mat-

ters, since they happened; and therefore they might very well hold them suspected to have conference with the Queen, least they might treate of matters in this time without instructions, and so rather do harm then good; but your Majesty being advertized of all things which had chanced, had sent me hither to treat with them, for the well of the realm; for the conversation of their honors and credit, and for their smerty; and I might boldly say unto him, that your Majesty had better deserved than the French He said, for his own part, he was much bound unto your Majesty, and had always found great fayour and courtesy in England; but to be plain with you, Sir, sayed he, there is not many of this assembly that have found so great obligation at the Queen your sovereigns hands, as at the French Kings, for the Earles of Morton and Glencairn be the only persons which took benefit by the Queens Majestys aid at Leith, the rest of the noblemen were not in the action; and we think, said he, the Queens Majesty your sovereign, by the opinion of her own council, and all the world, took as great benefit by that charge as the realm of Scotland, or any particular person; and not to talk with yow as an ambassador, but with Sir Nicholas Throkmorton. my Lord Morton, and such as were in pain for the death of Davie, found but cold favour at the Queens Majestys hands, when they were banish'd forth of their own country: but I would all our whole company were as well willing to accomplish the Queen your sovereigns intents and desires as I am: for mine own part, I am but one, and that of the meanest sort, and they be many noblemen, and such as have great interest in the matter; mary, yow shall be assured I will imploy myself to imploy my credit, and all that I may do, to satisfie the Queen your mistress, as much as lyeth in me, and for your own part you have a great many friends in this assembly; with many other good words. conclusion I must take this for an answer, to stay untill the other lords were come, and thereupon I thought meet to advertize your Majesty what hath passed, and how far forth I have proceeded; your expectation being great to hear from hence.

And now to advertize your Majesty of the state of all things, as I have learned since my coming hither, it may please your Majesty to understand as followeth.

The Queen of Scotland remaineth in good health in the castle of Lochlevin, guarded by the Lord Linsay and Lochleven, the owner of the house; for the Lord Ruthven

is imploved in another commission, because he began to show great favour to the Queen, and to give her intelligence. She is waited on with 5 or 6 ladys, 4 or 5 centlewomen, and 2 chamberers, whereof one is a French woman. The Earle of Buchan, the Earle of Murray's brother, hath also liberty to come to her at his pleasure; the lords aforesaid, which have her in guard, doe keep her very straitly, and, as far as I can perceive, their rigour proceedeth by their order from these men, because that the Queen will not by any means be induced to lend her authority to prosecute the murder. nor will not consent by any perswasion to abandon the Lord Bothell for her husband, but avoweth constantly that she will live and die with him; and saith, that if it were put to her choice to relinquish her crown and kingdom, or the Lord Bothell, she would leave her kingdom and dignity, to go as a simple damsell with him, and that she will never consent that he shall share worse or have more harm than herself.

And, as far as I can perceive, the principall cause of her detention is, for that these lords do see the Queen being of so fervent affection towards the Earle Bothell as she is, and being put at, as they should be compelled to be in continuall arms, and to have occasion of may battles, he being with manifest evidence notoriously detected to be the principall murderer, and the lords meaning prosecution of jus-

tice against him according to his merits.

The lords mean also a divorce betwixt the Queen and him, as a marriage not to be suffered for many respects, which separation cannot take place if the Queen be at liber-

ty, and have power in her hands.

They do not also forget their own perill, conjoin'd with the danger of the Prince, but as far as I can perceave, they intend not either to touch the Queen in suerty or in honor, for they do speak of her with respect and reverence, and do affirm, as I do learn, that the conditions aforesaid accomplished, they will both put her to liberty, and restore her to her estate.

These lords have for the guard of their town 450 harqubushers which be in very good order, for the entertainment of which companys, untill all matters be compounded, they did sue unto your Majesty, to aid them with such sum of mony as hath been mentioned to Mr. Secretary by the Lord of Lidingtons writting, amounting as I perceive to ten or twelve thousand crouns of the

They were latly advertized that the French King doth mind to send hither Monsieur de la Chapell des Ursine, a knight of the French order, and always well affectionate to the house of Guyse; and howsoever La Forest, Villaroŷ, and Du Crocq have used language in the Queens favour and to these lords disadvantage there, to your Majesty; La Crocq doth carry with him such matter as shall be little to the Queen's advantage; so as it is thought the French King, upon his coming to his presence, will rather satisfie the lords than pleasure the Queen; for they have their party so well made, as the French will rather make their profit by them, than any other way.

Herewith I send your Majesty the last bond agreed on, and signed by the Hamiltons, the Earl of Argyll, Huntly,

and sundry others, at Dumbarton.

Nevertheless, since my coming to this town, the Hamiltons have sent unto me a gentleman of their surname, named Robert Hamilton, with a letter from the Bishop of St. Andrew's, and the Abbot of Arbroth, the copy whercof I send your Majesty, and mine answer unto them, referring to the bearer the declaration of some things as these did by him unto me.

The Earle of Argyll hath, in like manner, sent another unto me with a letter and credit; I have used him as I did the others, the coppy of both which letters I send your Majesty also. The Lord Harrys hath also sent unto me but not written, and I have returned unto him in like sort.

Against the 20th day of this month there is a generall assembly of all the churches, shires, and boroughs towns of this realm, namely, of such as be contented to repair to these lords to this town, where it is thought the whole state of this matter will be handeled, and I fear me much to the Queen's disadvantage and danger; unless the Lord of Lidington and some others which be best affected unto her do provide some remedy; for I perceave the great number, and in manner all, but chiefly the common people, which have assisted in these doings, do greatly dishonour the Queen, and mind scriously either her deprivation, or her destruction; I used the best means I can (considering the furie of the world here) to prorogue this assembly, for that appeareth to me to be the best remedy: I may not speak of dissolution of it, for that may not be abiden, and I should thereby bring my self into great hatred and peril. The chiefest of the lords which be here present at this time dare not show so much lenity to the Queen as I think they could be contented. for fear of the rage of the people. The women be most furious and impudent against the Queen, and yet the men be mad enough; so as a stranger over busic may soon be

made a sacrifice amongest them.

There was a great bruit that the Hamiltons with their adherents would put their force into the fields against the 24th of this month, but I do not find that intent so true as the common bruit goeth.

The Earle of Argyll is in the Highlands, where there is

trouble among his own countrymen.

The Earle of Lennox is by these lords much desired here, and I do believe your Majesty may so use him, and direct him, as he shall be able to promote your purpose with these men.

The Earle of Argyll, the Hamiltons and he be incompatible.——I do find amongst the Hamiltons, Argyll, and the

company, two strange and sundry humours.

Hamiltons do make shew of the liberty of the Queen, and prosecute that with great earnestness, because they would have these lords destroy her, rather than she should be recovered from them by violence; another time they seem to desire her liberty and Bothwell's destruction, because they would compass a marriage betwixt the Queen and the Lord of Arbroth.

The Earle of Argyll doth affect her liberty, and Bothwell's destruction, because he would marry the Queen to his brother.

And yet neither of them, notwithstanding their open concurance (as appeareth by their bond), doth discover their minds to each other, nor mind one end. Knox is not here, but in the west parts: he and the rest of the ministers will be here at the great assembly, whos austerity against the

Queen I fear as much as any man's.

By some conference which I had with some of this councill, me thinketh that they have intelligence that there is a disposition in the Queen of Scotland to leave this realm, and to retire herself either into England or into France, but most willingly into England; for such —— and mislikings as she knoweth hath been, and is meant unto her in France, leaving the regiment either to a number of persons deleagued and authorized by her, or to some one or more.

And it may please your Majesty, I think it not amiss to put yow in remembrance, that in case the said Queen come into England by your allowance, without the French King's consent, she shall loose her dowery in France, and have little or nothing from hence to entertain her; and in case she do go into France with the King's contentment, she may be an instrument (if she can recover favour, as time will help to cancell her disgrace) either by matching with some husband of good quality, or by some other devise, to work new unquietness to her own country, and so consequently to your Majesty's.

Therefore it may prease your Majesty to consider of this matter, and to let me know your pleasure with convenient speed, how I shall answer the same, if it be propounded unto me, either by the Queen or by the councill, as a piece of the end and composition. For I am suic, of late, she hath seemed very desirous to have the matter brought to pass that she might go into England, retaining her estate and jurisdiction in herself, though she do not exercise it; and likewise I understand that some of this council which be least affected to her safety do think there is no other way to save her. Thus Almighty God preserve your Majesty in health, honour, and all felicity; at Edin the 14th July, 1567.

#### Sir Nicholas Throhmorton to Queen Elizabeth, the 18th of July, 1567, from Edinburgh.

Ir may please your Majesty, you might per-An Origiceave by my letters of the 16th, how far I had pronal. Paceded with these lords, and what was their anper Office. swer; since which time I have spoken particularly with the Earle Morton, the Lord of Lidington, and Sir James Balfour, captain of this castle; at whose hands I cannot perceave that as yet access to the Queen to Lochleven will be granted me, staying themselves still by the absence of the lords and others their associates, which (they say) they look for within two days; and for that I find, by likelihood and apparent presumptions, that mine access to the Queen will hardly be granted, I have thought good not to defer this dispatch untill I have a resolute answer in that matter.

May it therefore please your Majesty to understand, Robert Melvin returned from the Queen in Lochleven, to this town, the 6th of July, and brought a letter from her written of her own hand to these lords, which doth contain, as I understand, matter as followeth—A request unto them to have consideration of her health, and if they will not put her to liberty, to change the place of restraint to the castle

of Stirling, to the end she might have the comfort and company of her son; and if they will not change her from Lochleven, she required to have some other gentleyomen about

her, naming none.

To have her apothecary, to have some modest minister; to have an imbroiderer to draw forth such work as she would be occupied about, and to have a varlet of the chamber.—Touching the government of the realm she maketh two offers, which are but generally touched in her letter, the particularitys be not specified, but refered to Robert Melvin's credit; the one is to commit it only and wholly to the Earle of Murray, the other is to the lords whose names ensue, assisted with such others as they shall call unto them, that is to say, the Duke of Chattelrault, the Earls of Morton, Murray, Marr, and Glencairn.

She hath written unto them that I might have access unto her.—She requireth further, that if they will not treat her and regard her as their Queen, yet to use her as the King their sovereign's daughter (whom many of them knew) and as their Prince's mother.—She will by no means yield to abandon Bothell for her husband, nor relinquish him; which matter will do her most harm of all, and hardeneth

these lords to great severity against her.

She yieldeth in words to the prosecution of the murder. I have the means to let her know that your Majesty hath

sent me hither for her relief.

I have also persuaded her to conform herself to renounce Bothell for her husband, and to be contented to suffer a divorce to pass betwixt them; she hath sent me word that she will in no ways consent unto that, but rather die; grounding herself upon this reason, taking herself to be seven weeks gone with child, by renouncing Bothell, she should acknowledge herself to be with child of a bastard, and to have forfeited her honour, which she will not do to die for it; I have perswaded her to save her own life and her child, to choose the least hard condition.

Mr. Knox arrived here in this town the 6th of this month, with whom I have had some conference, and with Mr.

Craig also, the other minister of this town.

I have perswaded with them to preach and perswad lenity. I find them both very austere in this conference; what they shall do hereafter I know not; they are furnished with many arguments, some forth of the Scripture, some forth of histories, some grounded (as they say) upon the

laws of this realm, some upon practices used in this realm, and some upon the conditions and oth made by their Prince at her coronation.

The Bishop of Galloway, uncle to the Earle of Huntley, hath sent hither to these lords, that his nephew the Earle and some others of that side may, at Linlithgow, or at Stirling, have some communication with some appointed on this side, assuring them that there is a good disposition in the lords of the other party to concurre with these, assuring further that they will not dissent for trifles or unnecessary things, and (as I am given to understand) they can be pleased the Queen's restraint be continu'd untill the murder be pursued in all persons, whereby the separation of the Queen and Bothell is implyed, the preservation of the Prince, the security for all men, and a good order taken for the governance of the realm in tranquility.

Captain Clerk, which hath so long served in Denmark and served at Newhaven, did the 16th of this mouth (accompanyed with one of his soldiers, or rather the soldier as the greater fame goeth) kill one Wilson a seaman, and such a one as had great estimation with these lords, both for his skill, his hardyness, honesty, and willingness in this action; whereupon Clerk hath retired himself: their quarrel was about the ship which took Blacketer, which ship was appointed by these lords to go to the north of Scotland to impeach the passage of the Earle Bothell, in case he went either to the isles, or to any other place; by the death of this man this enterprize was dashed.

The Bishop of Galloway is come to Linlithgow, and doth desire to speak with the Lord of Lidington.

The Abbot of Kilwinning hath sent for Sir James Balfour, captain of the castle, to have conference with him.

As I wrote unto your Majesty in my last, the Hamiltons now find no matter to disever these lords and them asunder, but would concurr in all things (yea in any extremity against the Queen) so as that they might be assured the Prince of Scotland were crouned King, and should die without issue, that the Earle of Lenox's son living should not inherit the croun of this realm, as next heir to his nephew.

And although the lords and councelors speak reverently, mildly, and charitably of their Queen, so as I cannot gather by their speech any intention to cruelty or violence, yet I do find by intelligence, that the Queen is in very great

peril of her life, by reason that the people assembled at this convention do mind vehemently the destruction of her.

It is a public speech among all the people, and amongst all estates (saving of the counselors) that their Queen hath no more liberty nor privilege to commit murder nor adultery, than any other private person, neither by God's laws,

nor by the laws of the realm.

The Earl of Bothell, and all his adherents and associates. be put to the horn by the ordinary justice of this town, named the lords of the session; and commandment given to all shirriffs, and all other officers, to apprehend him, and all other his followers and receiptors. The Earl of Bothell's porter, and one of his own servitors of his chamber, being apprehended, have confessed such sundry circumstances, as it appeareth evidently, that he the said Earl was one of the principal executors of the murder, in his own person, accompanyed with sundry others, of which number I cannot yet certainly learn the names but of three of them, that is to say, two of the Ormistons of Tivotdall, and one Hayborn of Bolton. The lords would be glad that none of the murderers should have any favour or receipt in Eugland, and hereof their desire is, that the officers upon the border may be warned. Bothell doth still remain in the north parts, but the Lord Seaton and Fleming, which have been there, have utterly abandoned him, and do repair hitherwards.-The intelligence doth grow daily betwixt these lords, and those which held of; and notwithstanding these lords have sent an hundred and fifty harqubushers to Stirling, to keep the town and passage from surprise; and so have they done in like manner to St. Johnston, which be the two passages from the north and west to this town, I do understand the captain of Dunbar is much busied in fortifying that place; I do mervile the carriages be not impeached otherwise than they be.

Of late this Queen hath written a letter to the captain of the said castle, which hath been surprised; and thereby matter is discovered which maketh little to the Queen's

advantage.

Thus, having none other matter worthy your Majesty's knowledge, I beseech God to prosper your Majesty with long life, perfect health, and prosperous felicity. At Edinburgh, the 18th of July, 1567.

Letter of Sir Nicholas Throhmorton to the Right Honourable the Earl of Leicester, Knight of the Order, and one of the Lords of Her Majesty's Most Honourable Privy Council.

24th of July, 1567. Paper Office. From the ori-

By my former dispatches sent to her Majesty, and Mr. Secretary, since the 12th of July, your Lordship might have perceived the state of this country; and to what end these matters be like to come; so as not to trouble your Lordship with many words, this Queen is like very shortly to be deprived of her royal estate, her crowned King and she detained in prison within

ginal. shortly to be deprived of her royal estate, her son to be crowned King, and she detained in prison within this realm, and the same to be governed in the young King's name, by a councel, consisting of certain of the nobility, and other wise men of this realm: so as it is easy to be seen that the power and ability to do any thing to the commodity of the Queen's Majesty, and the realm of England, will chiefly, and in manner wholly, rest in the hands of these lords, and others their associates assembled at Edinburgh. Now, if the Queen's Majesty will still persist in her former opinion towards the Queen of Scotland (unto whom she shall be able to do no good), then I do plainly see that these lords and all their accomplices will become as good French as the French King can wish, to all intents and purposes. And as for the Hamiltons, the Earls of Arguile, Huntley, and that faction, they be already so far inchanted that way, as there needeth little devise to draw them to the French devotion. Then this is the state of things so come to pass of this country, that France has Scotland now as much conjoined unto them, to all purposes, as ever it was; and what an instrument the young Prince will prove, to unquiet England, I report me to your Lordships wisdom; and therefore considering the weight of the matter, and all the cirumstances, I trust your Lordship will well bethink you in time (for 'tis high time) how to advise her Majesty, to leave nothing undone that may bring the Prince of Scotland to be in her possession, or, at the least, to be at her devotion. And amongst other things that I can imagine, for the first degree nothing is more meet to bring this to effect, than to allure this company here assembled to bea her Majesty their favour. Some talk hath passed between the Lord of Liddington and me, in certain conferences about this matter. By him I find, that when her Majesty shall have won these men to her devotion, the principal point

that will make them conformable to deliver their Prince into England, will rest upon the Queen, and the realm's enabling him to the succession of the crown of England. for fault of issue of the Queen's Majesty's body; some other things will also be required, as the charge of the said Prince and his train to be at the charge of England. I do well perceive that these men will never be brought to deliver their Prince into England without the former condition, for the succession of England; for (saith Liddington) that taking place, the Prince shall be as dear to the people of England as to the people of Scotland; and the one will be as careful of his preservation as the other. Otherwise, he saith, all things considered, it will be reported that the Scottishmen have put their Prince to be kept in safety, as those which commit the sheep to be kept by the wolves. So as for conclusion, your Lordship may perceive here will be the scope of this matter. As unto the delivering of him upon hostages, he sayeth, let no man think, that the condition of the succession not being accomplished, the nobility and the gentry will never consent to leave themselves destitute of their sovereign upon any hostages, neither upon any promises, nor likelihood of good to issue in time to come. It were not good for vourselves (saith he) that the matter were so handled; for then you should adventure all your goods in one ship, which might have a dangerous effect, considering the unwillingness of the Queen your sovereign to consent to establishing any successor to the crown. And then, how unmote were it, that her Majesty having in her possession already all such persons as do pretend to it, or be inheritable to the crown, to have our Prince also in her custody. For so there might follow, without good capitulations, a strange and dangerous issue, tho' the Queen your mistress do think that such imaginations could not proceed but from busy heads, as you have uttered unto us on her behalf. What is come to pass since my last dispatch, and how far forth things are proceeded, I refer your Lordship to be informed by my letters sent unto her Majesty at this time. And so I pray Almighty God preserve your Lordship in much honour and felicity. At Edenburgh, this 24th of July, 1567.

It may please your good Lordship to make my Lord Stuard partner of this letter. The Queen to Sir Nicolas Throkmorton. By the Queen.

Tausty and right well-beloved, we greet you 6th Aug. well, for as much as we do consider that you have now a long time remained in those parts without expedition in the charge committed unto you, we think it not meet, seeing there hath not followed the good acceptation and fruit of our well meaning towards that state, which good reason would have required that you should continue there any longer: our pleasure, therefore, is, that you shall, immediately upon the receipt hercof, send your servant Middlemore unto the lords and estates of that realm, that are assembled together, willing him to declare unto them, that it cannot but seem very strange unto us, that you having been sent from us, of such good intent, to deal with them in matters tending so much to their own quiet, and to the benefit of the whole estate of their country, they have so far forgotten themselves, and so slightly regarded us and our good meaning, not only in delaying to hear you, and deferring your access to the Queen their sovereign, but also. which is strangest of all, in not youchsafing to make any answer unto us. And altho' these dealings be such, indeed, as were not to be looked for at their hands, yet do we find their usage and proceeding towards their sovereign and Queen to overpass all the rest, in so strange a degree. as we for our part, and we suppose the whole world besides. cannot but think them to have therein gone so far beyond the duty of subjects, as must needs remain to their perpetual tauche for ever. And therefore ye shall say, that we have tho't good, without consuming any longer time in vain, to revoke you to our presence, requiring them to grant your licence and passport so to do, which, when you shall have obtained, we will that you make your repair hither unto us, with as convenient speed as you may. Given, &c. Indorsed 6th August, 1567.

Throhmorton to the Right Honourable Sir William Cecil, Knight, one of Her Majesty's Privy Council and Principal Secretary, give these.

SIR.

12th Aug.
1567.
Paper Office.

What I have learned, since the arrival of my Lord of Murray, and Mons. de Linnerol, you shall understand by my letter to her Majesty, at this time. The French do, in their negotiations,

as they do in their drink, put water to their From the wine. As I am able to see into their doings. original. they take it not greatly to the heart how the Queen sleep, whether she live or die, whether she be at liberty or in prizon. The mark they shoot at is, to renew their old league: and can be as well contented to take it of this little King (howsoever his title be), and the same by the order of these lords, as otherwise. Lyneroll came but yesterday, and methinketh he will not tarry long; you may guess how the French will seek to displease these lords. when they changed the coming of la Chapelle des Oursins for this man, because they doubted that de la Chapelle should not be grateful to them, being a Papist Sir, to speak more plainly to you than I will do otherwise, methinketh the Earl of Murray will run the course that those men do, and be partaker of their fortune. I hear no man speak more bitterly against the tragedy, and the players therein, than he, so little like he hath to horrible sins. I hear an inkling that Ledington is to go into France, which I do as much mislike, as any thing, for our purpose. I can assure you the whole Protestants of France will live and die in these mens quarrels; and, when there is bruit amongst you, that aid should be sent to the adverse party. and that Martigues should come hither with some force; Mons. Baudelot hath assured me of his honour, that instead of Martigues coming against them, he will come with as good a force to succour them: and if that be sent under meaner conduct. Robert Stuart shall come with as many to fortify them. But the constable hath assured these lords. that the King meaneth no way to offend them. Sir, I pray you find my revocation convenient, and speed you to further it, for I am here now to no purpose, unless it be to kindle these lords more against us. Thus I do humbly take my leave of you, from Edenburgh, the 12th of August, 1567.

Yours to use and command.

#### The Queen to Sir Nicolas Throhmorton.

TRUSTY and well-beloved, we greet you well. We have, within these two days, received three sundry letters of yours, of the 20th, 22d, and 23d of this month, having not before these received any seven days before; and do find, by these your letters, that you have very diligently and largely advertised us of all the hasty and peremptory proceedings there; which as we nothing like, so we trust in

time to see them wax colder, and to receive some reformation. For we cannot perceive, that they with whom you have dealt can answer the doubts moved by the Hamiltons, who howsoever they may be carried for their private respects, yet those things which they move will be allowed by all reasonable persons. For if they may not, being noblemen of the realm, be suffered to hear the Queen their sovereign declare her mind concerning the reports which are made of her, by such as keep her in captivity, how should they believe the reports, or obey them, which do report it? And therefore our meaning is, you shall let the Hamiltons plainly understand that we do well allow of their proceedings (as far forth as the same doth concern the Queen their sovereign for her relief), and in such things as shall appear reasonable for us therein to do for the Queen our sister, we will be ready to perform the same. And where it is so required, that upon your coming thence the Lord Scroope should deal with the Lord Herris to impart their meanings to us, and ours to them, we are well pleased therewith, and we require you to advertize the Lord Scroope hereof by your letters, and to will him to shew himself favourable to them in their actions, that may appear plainly to tend to the relief of the Queen, and maintenance of her authority. And as we willed our secretary to write unto you, that, upon your message done to the Earl of Murray, you might return, so our meaning is you shall. And if these our letters shall meet you on the way, yet we will have you advertise both the Lord Scroope and the Hamiltons of our meaning.

Indorsed 29 Aug. 1567.

# No. XXIII. (Vol. II. p. 181.)

Sir Nicholas Throkmorton to the Archbishop of St. Andrew's and the Abbot of Arbrothe.

13th Aug. 1567. Paper Office. From a copy which Sir Nicholas sent to the Queen. AFTER my good commendations to your good Lordships, this shall be to advertize you, that the Queen's Majesty my sovereign having sent me hither her ambassador to the Queen her sister your sovereign, to communicate unto her such matter as she thought meet, considering the good amity and intelligence betwixt them, who being detained in captivity (as your Lordships know) contrary to the duty of all good subjects,

for the enlargement of whose person, and the restitution of her to her dignity, her Majesty gave me in charge to treat with these lords, assembled at Edenburgh. offering them all reasonable conditions and means as might be, for the safeguard of the young Prince, the punishment of the late horrible murder, the dissolution of the marriage betwixt the Queen and the Earl of Bodwell, and lastly for their own sureties. In the negotiation of which matters I have (as your Lordships well know) spent a long time to no purpose, not being able to prevail in any thing with those lords to the Queen my sovereign's satisfaction. Of which strange proceedings towards her Majesty, and undutiful behaviour towards their sovereign, I have advertised the Queen's Majesty, she (not being minded to bear this indignity) hath given me in charge to declare her further pleasure unto them, in such sort as they may well perceive her Majesty doth disallow of their proceedings, and thereupon hath revoked me. And further hath given me in charge to communicate the same unto your Lordships, requiring you to let me know, before my departure hence (which shall be, God willing, as soon as I have received answer from you) what you and your confederates will assuredly do, to set the Queen your sovereign at liberty, and to restore her to her former dignity by force or otherwise; seeing these lords have refused all other mediation, to the end the Queen's Majesty my sovereign may concur with your Lordships in this honourable enterprize.

And in case, through the dispersion of your associates, your Lordships can neither communicate this matter amongst you, nor receive resolution of them all by that time, it may please you to send me the opinion of so many of you as may confer together, within two or three days, so as I may have your answer here in this town by Monday or Tuesday next at the farthest, being the 19th of this August; for I intend (God willing) to depart towards England, upon Wednesday following. Thus I must humbly take my leave of your Lordships at Edenburgh, the 13th of

Aug. 1567.

Indorsed the 13th of Aug. 1567.

#### Sir Nicholas Throkmorton to the Lord Herrys.

Your good Lordship's letter of the 13th of August I have received the 19th of the same. 1567. Paper Office. For answer whereunto it may like your Lordship to understand, that I will signify unto you plain-

From a copy which Sir Nicholas sent to Secretary Cecil.

ly, how far forth I am already thoroughly instructed of the Queen's Majesty my sovereign's pleasure concerning the detention of the Queen your sovereign, and concerning her relief.

To the first her Majesty hath given in charge, to use all kinds of persuasion in her name, to move these lords assembled at Edenburgh to

desist from this violent and undutiful behaviour, which they use towards their sovereign. And in this part, besides the shew of many reasons, and sundry persuasions of amicable treaty with them, her Majesty hath willed me to use some plain and severe speech unto them, tending so far forth, as if they would not be better advised, and reform these their outrageous proceedings exercised against their sovereign, that then they might be assured her Majesty neither would, nor could endure such an indignity to be done to the Queen, her good cousin and neighbour.

And notwithstanding these my proceedings with them, they have made proof to be little moved thereby; for as yet neither will they consent to the enlargement, neither suffer me to speak with her. So as it seemeth to me, it is superfluous to treat any more with them after this manner. Whereupon I have advertised the Queen's Majesty my sovereign, expecting daily her Majesty's further order; and as I shall be advertised thereof, so will not fail to signify the same to your good Lordship; and in the mean time will advertise her Majesty also, what your Lordship hath written unto me. Thus with my due commendations to your good Lordship, I commit the same to Almighty Cod, resting always to do you the pleasure and service that I can lawfully. At Edenburgh.

Indorsed 24th of August, 1567.

# No. XXIV. (Vol. II. p. 189.)

Account of Lord Herreis's behaviour in the Parliament held December 15, 1567.

Paper Office.
THE Lord Herrys made a notable harangue in the name of the Duke and himself, their friends and adherents (the Duke himself, the Earl of Cassilles, and the Abbot of Kilwinning being also present), to persuade the union of the whole realm in one mind. Wherein he did not spare to set forth solemnly the great praise that part of this nobility did deserve, which in

the beginning took meanes for punishment of the Earl Bothwell: as also seeing the Queen's inordinate affection to that wicked man, and that she could not be induced by their persuasion to leave him, than in sequestring her person within Lochleven, they did the duty of noblemen. That their honourable doings, which had not spared to hazard their lives and lands, to avenge their native country from the slanderous reports that were spoken of it among other nations, had well deserved that all their brothren should join with them in so good a cause. That he and they, in whose names he did speak, would willingly, and without any compulsion, enter themselves in the same voke. and put their lives and lands in the like hazard, for maintenance of our cause. And if the Queen herself were in Scotland, accompanied with 20,000 men, they will be of the same mind, and fight in our quarrel. He hoped the remainder noblemen of their party, Huntly, Arguile, and others, which had not as yet acknowledged the King, would come to the same conformity, whereunto he would also carnestly move them. And if they will remain obstinate. and refuse to qualify themselves, then will the Duke, he and their friends, join with us to correct them, that otherwise will not reform themselves. So plausible an oration, and more advantageous for our party, none of ourselves could have made. He did not forget to term my Lord Regent by the name of Regent (there was no mention at all of the Earl of Murray), and to call him Grace at every word, when his speeches were directed to him, accompanying all his words with low courtesies after his manner.

No. XXV. (Vol. II. p. 206.)

Queen Mary to Queen Elizabeth.

MADAM.

Cott. Lib. Cal. 1. A copy and probably a translation.

ALTHOUGH the necessity of my cause (which maketh me to be importune to you) do make you to judge that I am out of the way; yet such as have not my passion, nor the respects whereof you are persuaded, will think that I do as my cause doth require. Madam, I have not accused you, neither in words, nor in thought, to have used yourself evil towards me. And I

believe that you have no want of good understanding, to

keep you from perswasion against your natural good inclination. But in the mean time I can't chuse (having my senses) but perceive very evil furtherance in my matters. since my coming hither. I thought that I had sufficiently discoursed unto you'the discommodities, which this delay bringeth unto me; and especially that they think in this next month of August, to hold a parliament against me and all my servants; and in the mean time, I am stayed here. and yet will you, that I should put myself further into your country (without seeing you), and remove me further from mine; and there do me this dishonour at the request of my rebels, as to send commissioners to hear them against me. as you would do to a mere subject, and not hear me by mouth. Now, Madam, I have promised you to come to you, and having there made my moan and complaint of these rebels, and they coming thither, not as possessors. but as subjects to answer, I would have besought you to hear my justification of that which they have falsely set forth against me, and if I could not purge myself thereof, you might then discharge their hand of my causes, and let me go for such as I am. But to do as you say, if I were culnable I would be better advised; but being not so, I can't accept this dishonour at their hands, that being in possession they will come and accuse me before your commissioners. whereof I can't like; and seeing you think it to be against your honour and consignage to do otherwise, I beseech von that you will not be mine enemy, untill you may see how I can discharge myself every way, and to suffer me to go into France, where I have a dowry to maintain me; or at least to go into Scotland, with assurance that if their come any strangers thither, I will bind myself for their return, without any prejudice to you; or if it pleis you not to do thus. I protest that I will not impute it to falshood if I receive strangers in my country without making you any other discharge for it. Do with my body as you will, the honour or blame shall be yours. For I had rather die here, and that my faithful servants may be succoured (tho' you would not so) by strangers, than to suffer them to be utterly undone, upon hope to receive in time to come particular commodity. There be many things to move me to fear that I shall have to do in this country with others than with you. But forasmuch as nothing hath followed upon my last moan, I hold my peace, happen what may hap. I have as leef to abide my fortune, as to seek it and not find it. Further, it pleased you to give license to my subjects to go and come. This has been refused by my Lord Scroop and Mr. Knolls (as they say) by your commandment, because I would not depart hence to your charge, untill I had answer of this letter, the I shewed them, that you required my answer

upon the two points contained in your letter.

The one is to let you briefly understand, I am come to you to make my moan to you, the which being heard, I would declare unto you mine innocency, and then require your aid; and for lack thereof, I can't but make my moan and complaint to God, that I am not heard in my just quarrel, and to appeal to other Princes to have respect thereunto as my case requireth; and to you, Madam, first of all, when you shall have examined your conscience before him, and have him for witness.—And the other, which is to come further into your country, and not to come to your presence, I will esteem that as no favour, but will take it for the contrary, obeying it as a thing forced. In mean time I beseech you to return to me my Lord Herries, for I can't be without him, having none of my counsal here. and also to suffer me, if it please you, without further delay, to depart hence whithersoever it be, out of this country. am sure you will not deny me this simple request for your honour's sake, seeing it doth not please you to use your natural goodness towards me otherwise, and seeing that of mine own accord I am come hither, let me depart again with yours. And if God permit my causes to succeed well. I shall be bound to you for it; and happening otherwise. yet I can't blame you. As for my Lord Fleeming, seeing that upon my credit you have suffered him to go home to his house, I warrant you he shall pass no further, but shall return when it shall please you. In that you trust me, I Perhaps will not (to die for it) deceive you. But from for Dumbarton I answer not, when my Lord Fleeming shall be in the Tower. For they which are within it will not forbear to receive succour, if I don't assure them of yours; no, tho' you would charge me withal, for I have left them in charge, to have more respect to my servants and to my estate, than to my life. Good sister, be of another mind; win the heart, and all shall be yours, and at your commandment. I thought to satisfy you wholly, if I might have seen you. Alas! do not as the serpent, that stoppeth his hearing, for I am no enchanter, but your sister, and natural cousin. If Cæsar had not disdained to hear or read the complaint of an advertiser, he had not so died; why should Princes ears be stopped, seeing that they are painted so long? meaning that they should hear all and be well advised, before they answer. I am not of the nature of the basilisk, and less of the chamelion, to turn you to my likeness, and tho' I should be so dangerous and cursed as men say, you are sufficiently armed with constancy and with justice, which I require of God, who give you grace to use it well with long and happy life. From Carlisle, the 5th of July, 1568.

# No. XXVI. (Vol. II. p. 207.)

Purt of a Letter from Sir Francis Knollis to Cecil, 8th of Aug. 1568, from Bolton.

An original. Paper outwardly, not only to favour the form, but also the chief article of the religion of the gospel, namely, justification by faith only; and she heareth the faults of papistry revealed by preaching, or otherwise, with contented ears, and with gentle and weak replys, and she doth not seem to like the worse of religion throw me.

Part of a Letter from Sir Francis Knollys to Cecil, 21 Sept. 1568, from Bolton.

- It came to this Queen's ears of late that she was bruited to be lately turned to the religion of the gospell, to the great disliking of the Papists hereabouts, which thing she herself confessed unto me, and yesterday, openly in the great chamber, when the assembly was full, and some Papists present, she took occasion to speak of religion, and then openly she professed herself to be of the Papist religion, and took upon her to patronize the same, more carnestly than she had done a great while afore, altho' her defences and arguments were so weak, that the effect of her speech was only to shew her zeal; and afterwards to me alone, when I misliked to see her become so confidently backward in religion. Why, said she, would you have me to lose France and Spain, and all my friends in other places, by seeming to change my religion, and yet I am not assured the Queen my good sister will be my assured friend, to the satisfaction of my honour and expectation.

## No. XXVII. (Vol. II. p. 208.)

A Letter from my Lord Herries to my Lord Scroop and Sir F. Knollys, Sept. 3d, 1568.

Cott. Lib. Cal. C. An original in his own hand. My Lords, pleasit your Honourable Lordships, I am informed by James Borthwick, lately come from the Queen's Majesty your soverane, that his schawin to her Highness I shuld have ridden in Crafurdmure, sen my last cuming into this realm, upon the Earl of Murray's depend-

ants; and that I suid have causit, or been of counsall to Scottismen to have ridden in Ingland, to slay or spulzie

her Majesty's subjects.

My Lords, I thought it right needful, because your Lordships is, by your soverane, commanded to attend upon the Queen's Majesty my mistress, so having daily access in thir matters, to declare upon the truth; humbly desiring that your Lordships will, for God's cause, certificate the Queen

your soverane the same.

As God lives, I have neither consented, nor any wise had knowledge of any Scottisman's riding in England, to do the subjects thereof hurt in bodies or goods, sene the siege of Leith; and as I understand it shall be fund true, that gif ony sic open hurt be done, it is by the Queen my sovereign's disobedients; and that I have not ridden nor hurt no Scottishman, nor commanded no hurt to be done to them, sen my coming from the Queen's Majesty of England, it is well kend, for that never ane will complain of me.

I have done more good to Crawfurdmure nor ever the Earl of Murray has done, and will be loather to do them any harm than he will. Except the Queen's Majesty your sovereign command sic false reports to be tryit, quhereof this is altogidder an inventit leasing, her Grace sall be trublit, and tyne the hearts of true men here, quhom of sic report sall be made, that baith would serve hir, and may, better

than they unworthy liars.

My Lords, I understand the Queen's Majesty your sovereign is not contented of this bruite, that there should ony Frenchman come in this realm, with the Duke of Chattelherault. Truth it is, I am no manner of way the counsall of their cuming, nor has no sic certainty thereof, as I hear by Borthwick's report, from the Queen's Majesty your sovereign. And gif I might as well say it, as it is true indeed, her Grace's self is all the wyitt, and the counsall that will

never let her take order with my maistress cause. For that our sovereign havand her Majesty's promise, be writing, of luff, friendship, and assistance, gif need had so requirit, enterit that realm upon the 16 day of May, sen that time the Queen's Majesty has commanded me diverse times to declare she would accept her cause, and do for her, and to put her in peaceable possession of this realme; and when I required of her Majesty, in my majstress name, that her Highness would either do for her (as her special trust was she wold), according to her former promises, or otherwise give her counsal, wold not consent (as I show her Grace I fand diverse repugnant), then that she would permit her to pass in France, or to some other Prince to seek support, or failing hereof (quhilk was agains all reason), that she would permit her to return in her awin countrie, in sic sempil manner as she came out of it, and said to her Majesty ane of thir, for her honour, would not be refusit, seeand that she was comed in her realm upon her writings and promises of friendship. And sicklike, I said to her Highness, gif my maistress had the like promise of her nobility and estates, as she had of herself, I should have reprovit them highly, gif they had not condescendit to one of thir three; and so I say, and so I write, that in the warld it shall be maist reprehendable, gif this promise taketh not other good effect nor yet it does. Notwithstanding, I get gud answer of thir promises of friendship made to my sovereign, and to put her Grace in this her awin countrie peaceably, we have fund the contrary working by Mr. Middlemore directit from her Highness to stay the army that cuist down our houses. And alsua, in the proceeding of this late pretendit Parliament, promised twenty days before the time to myself, to have caused it been dischargit. And yet contrary to this promise, have they made their pretendit manner of forfaulture of 31 men of guid reputation, bishops, abbottis, and baronis, obedient subjects to our sovereign, only for her cause.

They have also disponit, sen our sovereign's cause was taken upon hand be the Queen's Majesty of that realm, an hundred thousand pounds Scots worth of her awin true subjects geir, under the color of the law, groundit upon their false, treasonable, stowin authority.

The murders, the oppressions, the burnings, the ravishing of women, the destruction of policy both ecclesiastical and temporal, in this mean time, as in my former writings I said, it was lamentable to ony Christian man to hear; of except God gif grace, the profession of the evangile of Jesus Christ,

professit be your Prince, counsall and realme, be mair myndit, nor the auld inamity that has stand betwixt the realms, many of my countrymen will doubt in this article, and their

proceedings puttis myself in Sanct Thomas belief.

Now, my Lords, gif the Queen's Majesty of that realm. upon quhais promise and honour my maistress came there. as I have said, will leave all the French writings, and French phrases of writings, quhilks among is them is over meikle on baith the sides unfit, and plainly, according to the auld true custom of Ingland and Scotland, quberein be a word promist truth was observ'd, promise, in the name of the eternal God, and upon the high honour of that nobill and princely blude of the Kings of Ingland, quhereof she is descendit, and presently wears the diadem, that she will put my maistress in her awin country, and cause her as Queen thereof in her authority and strength to be obeyit, and to do the same will appoint an certain day within two months at the farthest, as we understand this to be our weil, sua will we, or the maist part of us all, follow upon it, leaving the Frenchmen, and their evil French phrases togidder. And therefore, and for the true perpetual friendship of that realm, will condition, and for our part, with the grace of Almighty God, keep sic heads and conditions of agreement, as noble and wise men can condescend upon, for the weill of this hail island. I have been partlings declaring to the Queen your sovereign. quhilk I shew to your Lordships selfis both in religion, in the punishment of the Earl Bothwhile, for the Queen's last husband's slaughter, and for a mutual band of amity perpetually to remain amangis us.

Doubtless, my Lords, without that we may find sic time and friendly working, as may give us occasion baith to forgette Middlemore and his late pretendit Parliament, we will turn the leaf, leaving our sovereign agains our will to rest where she is, under the promise of friendship, as I have baith said, and will ever affirm, made by your sovereign, quhilk was only cause of her Grace's coming in that realme, and seek the help and moyen of French, or Spanish, till expulse this treasonable and false pretendit authority, qubilk

incaus to reign above us.

My Lords, I desire your Lordships consider, that it is he that maist desires the amity betwixt Ingland and Scotland to continue, and of a poor man best cause has, that writ this.

My brother, the Laird of Skirling, schaws me, that in your Lordships communing with him, it appearit to him your mind was we shold suffer the Earl of Murray to work. altho' it were agains reason to us, and complain thereof to the Queen's Majesty, and her Highness wald see it reformit. My Lords, her Majesty will be over meikle troublit to reform the wranges we have sustainit already. For I am sure, gif reason and justice may have place, our maistress, and we her subjects, have received express wrang far above two hundred thousand pounds sterling, in the time of this unhappy government, seeing the reformation of sa great causes comes, now a days, so slowlie, and the ungodly law of oblivion in sic matters so meikle practis'd, I think, nowther for the Queen's honour, nor our weill, your Lordships would sua mean, nor that it is good to us to follow it. And that ye will give your Sovereign sic advertisement thereof, as your good wisdoms shall find in this cause meet. It will be true and frindful working for us indeed, and nowther French phrases, nor boasting, and finding little other effect, that will cause us to hold away the Frenchmen. This is plainly written, and I desire your Lordships plain answer, for in truth and plainness langest continues gud friendship, quhilk in this matter I pray God may lang continue, and have your Lordships in his keeping. Off Dumfreis, the 3d day of September, 1568.

> Your Lordships at my power to command leifully HERRIS.

#### Queen Mary to Q. Elizabeth.

1568.
Cott. Lib.
Cal. 1. An original.

MADAME ma bonne soeur. J'ay resceu de vos lettres, d'une mesme dete; l'une, ou vous faites mention de l'excuse de Mons'. de Murra pour tenir son pretendu parlement, qui me sem-

ble bien froid, pour obtenir plus de tollerance que je m'estois persuadée n'avoir par vostre promesse, quant a n'osser donner commission de venir sans un parlement pour leur peu de nombre de noblesse alors, je vous respons, qu'ils n'ont que trois ou quatre d'avantage, qui eussent aussi bien dit leur opinion hors de parlement, qui n'a esté tenu tant pour cette effect, mais pour faire ce qu'expressement nous avions requis estre empeschés, qui est la forfalture de mes subjects pour m'avoir estés fidelles, ce que je m'assurois, jusques a hier, avoir eu en promesse de vous, par la lettre ecrite a mi Lord Scrup e Maistre Knoleis vous induire a ire contre eulx, voire, a les ensayre resentir; toutefois je vois que je l'ay mal pris, j'en suis plus marrie, pour

ge que sur votre lettre qu'il me montrerent, et leur parole. je l'av si divulguement assuray que pour vengeance que i'en desirasse, si non mettre difference entre leur faux deportemens, et les miens sinceres. Dans vostre lettre aussi datée du 10me d'Aoust, vous metties ces mots. "I think your adverse party, upon my sundry former advices, will hold no Parliament at all; and if they do, it shall be only in form of an assembly to accord whom to send into this realm, and in what sort; for otherwise, if they shall proceed in manner of a Parliament, with any act of judgment against any person, I shall not, in any wise, allow thereof; and if they shall be so overseen, then you may think the same to be of no other moment, than the former procedures; and by such their rash manner of proceeding, they shall most prejudice themselves, and be assured to find me ready to condemn them, in their doings." Sur quoy, j'ay contremandé mes serviteurs, les faissant retirer, souffrant selon vostre commandement d'etre faussement nommés traitres, par ceulx, qui le sont de vray; et encore d'etre provoques par escarmons dies, et par prinses de mes gens et lettres, et au contraire vous etes informée que mes subjects ont evahis les vostres. Madame, qui a fait ce rapport n'est pas homme de bien, car Laird de Scsford et son fils sont et ont estes mes rebelles depuis le commencement; enquirés vous, s'ils n'estoient a Donfris avegues eulx; j'avois offri respondre de la frontiere, ce que me fut refusé, ce que m'en devroit asses descharger; neanmoins, pour vous faire preuve de ma fidelité, et de leur falcité, s'il vous me fayte donner le nom des coulpables, et me fortifier, je commanderay mes subjects les pour suivre, ou si vous voules que ce soit les vostres, les miens leur ayderont; je vous prie m'en mander vostre volonté, au reste mes subjects fidelles seront responsables a tout ce que leur sera mis su les contre vous, ni les vostres, ni les rebelles, despuis que me conseillates les faire retirer. Quant aux François, j'escrivis que l'on m'en fit nulle poursuite, car j'esperois tant en vous, que je n'en aurois besoign, -je ne sceu si le dict aura en mes lettres, mais je vous jure devant Dieu que je ne scay chose du monde le leur venue, que ce que m'en aver manday, ni n'en ai oui de France mot du monde, et ne le puis croire pour cest occasion, et si ils si sont, c'est sans mon sceu ni consentement. Pourquoy je vous supplie ne me condamner sans m'ouire, car je suis pres de tenir tout ce que j'ay offert a Mester Knoleis, et vous assure que vostre amité, qu'il vous plest m'offrir, sera rescue avant toutes les choses du monde, quant

France servit la pour presser leur retour a ceste condition, que prenies mes affaires en mein en soeur, et bonne ami. comme ma Francé est en vous; mais une chose seule me rende confuse, j'ay tant d'enemies qu'ont votre oreille, la quelle ne pouvant avoir par parolle, toutes mes actions vous sont desguisées, et falsement raportees, par quoi il m'est impossible de m'assurer de vous, pour les manteries qu'on vous a fait, pour destraire vostre bonne volonté de moy; par quoy je desirerois bien avoir ce bien vous faire entendre ma sincere et bonne affection, laquelle je ne puis si bien descrire. que mes enemis a tort ne la decoloré. Ma bonne soeur. gagues moy; envoyés moy querir, n'entrés en jalousie pour faulx raports de celle que ne desire que votre bonne grace; je me remettray sur Mester Knoleis, a qui je me suis librement descouverte, et apres vous avoir baisée les mains, je prierai Dieu vous donner en santé, longue et heureuse vie. De Boton, ou je vous promets, je n'espere pertir, qu'aveques vostre bonne grace, quoyque les menteurs mentent. Ce 26 d'Aoust.

# No. XXVIII. (Vol. II. p. 209.)

Queen Elizabeth to the Earl of Murray.

Paper Office. From a copy corrected by Secretary Cecil. Right trusty and right well-beloved cousin, we greet you well. Where we hear say, that certain reports are made in sundry parts of Scotland, that whatsoever should fall out now upon the hearing of the Queen of Scotts cause, in any proof to convince or to acquit the said Queen concerning the horrible murder of her late husband our cousin.

we have determined to restore her to her kingdom and government, we do so much mislike hereof, as we cannot indure the same to receive any credit: and therefore we have thought good to assure you, that the same is untruly devised by the authors to our dishonour. For as we have been always certified from our said sister, both by her letters and messages, that she is by no means guilty or participant of that murder, which we wish to be true, so surely if she should be found justly to be guilty thereof as hath been reported of her, whereof we would be very sorry, then, indeed, it should behoove us to consider otherwise of her cause than to satisfy her desire in restitution of her to the government of that kingdom. And so we would have you and all others think, that should be disposed to conceive honourably of us and our actions.

Indorsed 20 Sept. 1568.

#### No. XXIX. (Vol. II. p. 214.)

Sir Francis Knollys to Cecil, the 9th of October, 1568, from York.

My Lord's Grace of Norfolk sending for me An original. to Bolton, to attend upon him here Thursday Paper last, I made my repair hither accordingly, mean-Office. ing to stay here until Munday next; as touching the matters of the commission, that his Grace and the rest have from her Highness, his Grace hath imparted unto me of all things thereunto appertaining, and what hath hitherto passed; and altho' the matters be too weighty for my weak capacity, to presume to utter any opinion of mine own thereof, yet I see that my Lord Herris for his parte laboureth a reconciliation, to be had without the extremity of odious accusations; my Lord of Ledington also saith to me, that he could wish these matters to be ended in dulce maner. so that it might be done with safety: of the rest you can conceive, by the advertisements and writings, sent up by our commissioners.

#### A Letter from the Bishop of Ross to the Queen of Scots, from York, October, 1568.

Cott. Lib.
Calig. C.1.
A copy.

Was the D. determinit purpose not to end your cause at this time, but to hold the same in suspence, and did that was in her power, to make the E. pursue extremity, to the effect

time, but to hold the same in suspence, and did that was in her power, to make the E. pursue extremity, to the effect F. and his adherents might utter all they could to your dishonour, to the effect to cause you come in disdain with the hail subjects of this realm, that ye may be the mair unable to attempt any thing to her disadvantage. And to this effect is all her intention, and when they have produced all they can against you, D. will not appoint the matter instantly, but transport you up in the country, and retain you there till she think time to shew you favour, which is not likely to be hastily, because of your uncles in France, and the fear she has of yourself to be her unfriend. And therefore their counsel is, that ye write an writing to the D. meaning that ye are informit that your subjects which has offendit you.—This in effect, that your Majesty hearing the estate of your affairs as they proceed in York, was informed

that her Majesty was informed of you, that you could not gudely remit your subjects in such sort as they might credit you hereafter, which was a great cause of the stay of this controversy to be ended. And therefore persuading her D. effectually not to trust any who had made such narration. But like as ye had rendered you in her hands, as most tender to you of any living, so prayit her to take na opinion of you, but that ye wald use her counsell in all your affairs, and wald prefer her friendship to all others, as well uncles as others, and assure her to keep that thing ye wald promise to your subjects by her advice. And if D. discredit you, ye wald be glad to satisfy her in that point be removing within her realm in secret and quiet manner, where her G. pleased, until the time her G. were fully satisfied, and all occasion of discredit removed from her: so that in the mean time your realm were holden in quietness, and your true subjects restored and maintained in their own estate, and sic other things tending to this effect. And affirms that they believe that this may be occasion to cause her credit you that ye offer so far; and it may come that within two or three months she may become better minded to your Grace. for now she is not well-minded, and will not shew you any pleasure for the causes aforesaid.

N. B. The title of this paper is in Cecil's hand; the following key is added in another hand.

A. The Laird of Lethington.

B. The Duke of Norfolk.

C. Was the day he rode to Cawood.

D. The Queen of England.

E. The Queen of Scots commissioners.

F. The Earl of Murray.

No. XXX. (Vol. II. p. 223.)

Deliberation of Secretary Cecil's concerning Scotland, Dec. 21, 1568.

Paper Office. THE best way for England, but not the casiest, that the Queen of Scots might remain deprived of her crown, and the state continue as it is.

The second way for England profitable, and not so hard.—That the Queen of Scots might be induced, by some perswasions, to agree that her son might continue King, because he is crowned, and herself to remain also Queen; and that the government of the realm might be committed to such persons as the Queen of England should name, so as for the

#### APPENDIX, No. XXX.

nomination of them it might be ordered, that a conv 297 number of persons of Scotland should be first named enient Queen of England, indifferently for the Queen of Scotland the for her son, that is to say, the one half by the Queen of is and and the other by the Earle of Lennox, and Lady Lencots, parents to the child; and out of those, the Queen's Manox, of England to make choice for all the officers of the rejesty that are, by the laws of Scotland, disposable by the Kinalm, Queen of the land.

That untill this may be done by the Queen's Majesty, government remain in the hands of the Earle of Murray the it is, providing he shall not dispose of any offices or per as tuals to continue any longer but to these offered of the pipe-

mises.

That a Parliament be summoned in Scotland by sever commandments, both of the Queen of Scots and of the youngl King.

- That hostages be delivered unto England on the voung King's behalf, to the number of twelve persons of the Earle of Murray's part, as the Queen of Scots shall name: and likewise on the Queen's behalf, to the like number as the Earle of Murray shall name; the same not to be any that have by inheritance or office cause to be in this Parliament; to remain from the beginning of the summons of that Parliament, until three months after that Parliament; which hostages shall be pledges that the friends of either part shall keep the peace in all cases, till by this Parliament it be concluded, that the ordinance which the Queen of England shall devise for the government of the realm (being not to the hurt of the crown of Scotland, nor contrary to the laws of Scotland for any man's inheritance, as the same was be-Decemr. 1567) shall be fore the Parliament at Edin<sup>r</sup>. the established to be kept and obeyed, under pain of high treason for the breakers thereof.
- ——— That by the same Parliament also be established all executions and judgments given against any person for the death of the late King.
- That by the same Parliament, a remission be made universally from the Queen of Scots to any her contrarys, and also from every one subject to another, saving that restitution be made of lands and houses, and all other things heritable, that have been by either side taken from them which were the owners thereof at the committing of the Queen of Scots to Lochleven.

That by the same Parliament it be declared who shall be

#### HISTORY OF SCOTLAND.

298 sors to the crown next after the Q. of Scots and her succes or else, that such right as the D. of Chattelheraplt issue At the marriage of the Q. of Scots with the Lord Darn-

had, hay be conserved and not prejudized.

ley, nat the Q. of Scots may have leave of the Queen's Thesty of England, twelve months after the said Parlia-Majet, and that she shall not depart out of England, without mential licence of the Queen's Majesty.

sped hat the young King shall be nourished and brought up

TEngland, till he be years of age.

in It is to be considered, that in this cause the composition I ween the Queen and her subjects may be made with cerbean articles, outwardly to be seen to the world for her hotakour, as though all the parts should come of her, and yet for note surety of contrarys, that certain betwixt her and the thmucen's Majesty are to be concluded.

## No. XXXI. (Vol. II. p. 225.)

The Queen to Sir Francis Knolleys, 22d January, 1568-9.

We greet you well. We mean not, at this point. Paper by any writing, to renew that which it hath pleased Office. God to make grievous to us and sorryful to yow: but forbearing the same as unmeet at this point, having occasion to command yow in our service, and yow also whilest yow are to serve us, we require yow to consider of this that followeth with like consideration and diligence, as hitherto yow have accustomate in our servise. At the time of our last letters written to yow the fourteenth of this month for removing of the Queen of Scots, we had understanding out of Scotland of certain writings sent by her from thence into Scotland, amongst the which one is found to contain great and manifest untruths touching us and others also, as shall and may plainly appear unto yow by the copy of the same, which likewise we send yow, and because at the same time we were advertised, that it should be shortly proclaimed in Scotland, though then it was not, we thought good first to remove the Queen, before we would disclose the same, and then expect the issue thereof; and now, this day, by letters from our cousin of Hunsdon we are ascertained, that since that time the same matters contained in the writing. are published in diverse parts of Scotland, whereupon we have thought it very meet, for the discharge of our honor, and to confound the falsehood contained in that writing, not only to have the same reproved by open proclamation upon

our frontiers, the coppy whereof we do herewith send yow. but also in convenient sort to charge that Queen therewith. so as she may be moved to declare the authors thereof, and persuaders of her to write in such slanderous sort such untruths of us: and in the mean season, we have here staved our commissioners, knowing no other whom we may more probably presume to be parties hereunto than they, untill the Queen shall name some other, and acquit them; who being generally charged, without expressing to them any particularity, do use all manner of speeches to discharge themselves; wherefore our pleasure is, that ye shall, after ye have well perused the coppy of this writting sent to yow, speedily declare unto her, that we have good understanding given us of diverse letters and writtings, sent by her into Scotland, signed by her own hand, amongst which one such writting is sent with her commandment, expressly as now it is already published, as we are much troubled in mind that a Princess as she is, having a cause in our hands so implicated with difficultys and calamitys, should either conceave in her own mind, or allow of them that should devise such false, untrue, and improbable matters against us and our honor, and specially to have the aventure to have the same. being known so untrue, to be published; and you shall also say, because we will not think so ill of her as that it should proceed of herself, but rather she hath been counselled thereunto, or by abuse made to think some part thereof to be true, we require her, even as she may look for any favour at our hands, that she will disburden herself as much as truly she may herein, and name them which have been the authors and perswaders thereof, and so she shall make as great amends to us as the case may require. After you have thus far proceeded, and had some answer of her whether she shall deny the writing absolutely, or name any that have been the advisers thereof, you shall say unto her that we have stayed her commissioners here, untill we may have some answer hereof, because we cannot but impute to them some part of this evil dealing, untill by her answer the authors may be known. And as soon as you can have direct answers from her, we pray you to return us the same; for as the case standeth, we cannot but be much disquieted with it, having our honour so deeply touched contrary to any intention in us, and for any thing we know in our judgment the Earl of Murray and others named in the same writting, void of thought for the matters, to them therein imputed; you may impart to the Queen of Scots either the contents of the slanderous letter, or shew her the copy to read it, and you may also impart this matter to the Lord Scroop, to join with you there as fou shall think meet.

Sir Francis Knolleys to Queen Elizabeth, from Wetherby, the 28th January, 1568.

——I will suppress my own griefs, and pass them over with silence, for the present learning An original. Paper of your Majesty-and for this Queen's answer Office. to the coppie of her supposed letter, sent unto Scotland. I must add this unto my brother's letter, sent unto Mr. Secretary yesternight late; in process of time she did not deny but that the first lines contained in the same copie was agreeable to a letter that she had sent unto Scotland, which touched my Lord of Murray's promise to deliver her son into your Majesty's hands, and to avoid that the same should not be done without her consent, made her, she saith, to write in that behalf; she saith also that she wrote that they should cause a proclamation to be made to stir her people to defend my Lord of Murray's intent and purpose, for delivering of her said son, and impunge his rebellious government, as she termed it, but she utterly denyeth to have written any of the other slanderous parts of the said letter touching your Majesty; she said also, that she suspected that a Frenchman, now in Scotland, might be author of some Scotch letters devised in her name, but she would not allow me to write this for any part of her answer.

# No. XXXII. (Vol. II. p. 232.)

Sir Nicholas Throkmorton to the Right Honourable the Lord of Liddington.

Your letter of the 3d of July, I have received the 15th of the same. For answer whereunto you shall understand that friends here to my Lord Regent and you do wish such a concurrence in all doings, as in matter and circum-

stances there arise no dissension, or at the least, no more nor other than the difference of countries doth necessarily require. We here do think convenient that as few delays be used as may be, for the consummation of the matter in hand, which principally to advance your allowance, prosecution, and speedy promotion in Scotland, is most requisite, for you are so wise, and well acquainted

with the state of the world, and with all our humours, as you know that some do allow and disallow for reason, some for respect of multitude, some for respect of persons, and so the cause is to go forward as men do like to set it forward. You are not to seek that some will use cautions. some neutrality, some delays, and some will plainly impunge it. And yet all and every of these sorts will alter their doings, when they shall see the Regent and his favourers accord with the best and greatest part there, and agree with the wisest and strongest party here. The the matter has taken its beginning here, upon deep and weighty considerations, for the well of both the Princes and their realms, as well presently as in time to come, yet it is thought most expedient that the Regent, and realm of Scotland, by you, should propose the matter to the Queen our sovereign, if you like to use convenience, good order, or be disposed to leave but a scar, and no wound of the hurts past. I would be glad that this my letter should come to your hands before the convention, whereat it seems your Queen's restoration and marriage to the Duke of Norfolk shall be propounded, either to wynne in them both allowance or rejection. To which proceedings, because you pray me to write frankly. I say and reason thus. Methinketh you use a preposterous order to demand the consent of such persons, in such matters, as their minds to a good end hath rather been felt or prepared, and therefore there must needs follow either a universal refusal, or factious division amongst you, whereby a bloustering intelligence must needs come to queen Elizabeth of the intended marriage from thence, which ought to have been secretly and advisedly propounded unto her Highness; hereby you see then the meaning is, by this dealing, her Majesty shall be made inexorable, and so bring the matter to such passe, as this which should have wrought surety, quietness, and a stay to both Queens and their realms, shall augment your calamity, and throw us your best friends into divorse with you, and into unhappy division amongst ourselves; for you may not conjecture that the matter is now in deliberation. but expecteth good occasion for executing. Sure I am you do not judge so slenderly of the managing of this matter. as to think we have not cast the worst, or to enter therein so far without the assistance of the nobility, the ablest, the wisest, and the mightiest of this realm, except Queen Elizabeth, from whom it hath been concealed until you, as the fittest minister, might propound it to her, on the behalf

of the Regent, and the nobility of Scotland. How far Master Woddes defamations do carry them of Queen Elizabeth's affections, and Master Secretary's, to assist the Regent and to suppress the Queen of Scots, I know not. nor it is not material; but I do assuredly think, that her Majesty will prefer her surety, the tranquillity of her reign. and the conversation of her people, before any device. which may proceed from vain discourse, or imperfections of passions and inconsiderate affections. And as for Mr. Secretary, you are not to learn that as he liketh not to go too fast afore, so he coveteth not to tarry too far behind. and specially when the reliques be of no great value or power. If I could as well assure you of his magnanimity. and constancy, as of his present conformity, I would say confidently, you may repose as well of him in this matter. as of the Duke of Norfolk, the Earls of Arundel, Pembroke. Leicester, Bedford, Shrewsbury, and the rest of the nobility: all which do embrace and proteste the accomplishment of this case. I have, according to your advice, written presently to my Lord Regent, with the same zeal and care of his welldoing that I owe to him, whom I love and honour. Secretary hath assured unto him the Queen of Scotland's favour and good opinion, wherewith he seemeth to be well satisfy'd. If your credit be as I trust, hasten your coming hither, for it is very necessary that you were here presently. O. Elizabeth both doth write to my Lord Regent in such sort, as he may perceive Mr. Wood's discourses of her Majesty's affection to be vain, and Mr. Secretary otherwise bent than he conjectureth of him, the effect of which her Majesty's letter you shall understand, by my Lord Leicester's letter unto you at this dispatch. At the court, 20th July, 1569.

# No. XXXIII. (Vol. II. p. 233.)

Part of a Letter from the Earl of Murray to L. B. probably Lord Burleigh.

1569. Harl. Lib. 37. B. 9. fo. 43.

BECAUSE I see that great advantage is taken on small occasions, and that the mention of the marriage betwixt the queen my sovereign's mother, and the D. of Norfolk, hath this while past been very frequent in beth the realms, and then I myself to be spoken of as a motioner,

which I perceive is at the last come to her Majesty's ears; I will, for satisfaction of her Highness, and the discharge

of my duty towards her Majesty, manifest unto you my interest, in medling in that matter, from the very beginning, knowing whatsoever is prejudicial to her Highness. cannot but be hurtful to the King my sovereign, this his realm, and me. What conferences was betwixt the Duke of Norfolk, and any of them that were with me within the realm of England, I am not able to declare; but I am no wise forgetful of any thing that passed betwixt him and me. either at that time, or since. And to the end her Majesty may understand how I have been dealt with in this matter, I am compelled to touch some circumstances, before there was any mention of her marriage. In York, at the meeting of all the commissioners, I found very --- and neutral dealing with the Duke, and others her Highness's commissioners, in the beginning of the cause, as in the making of the others to proceed sincerely, and so furth. During which time, I entered into general speech, sticking at our just defence in the matters that were objected against us by the said Queen's commissioners, looking certainly for no other thing, but summary cognition in the cause of controversy, with a final declaration to have followed. Upon a certain day the Lord Lithington, secretary, rode with the Duke to Howard. What purpose they had I cannot say, but that night Lithington returning, and entring in conferrence with me upon the state of our action, I was advised by him to pass to the Duke, and require familiar conferrence, by the which I might have some feeling to what issue our matters would tend. According to which advice, having gotten time and place convenient in the gallery of the house where the Duke was lodged, after renewing of our first acquaintance made at Berwick, the time before the assize of Leith, and some speeches passed betwixt us, he began to say to me, how he in England had favour and credit, and I in Scotland had will and friendship of many, it was to be tho't there could be none more fit instruments to travel for the continuance of the amity betwixt the realms, than we two. And so that discourse upon the present state of both, and how I was entered in that action tending so far to the Queen's dishonour, I was willed by him to consider how matters stood in this, what honour I had received of the Queen, and what inconveniences her defamation in the matters laid to her charge might breed to her posterity. Her respect was not a little to the crown of England, there was but one heir. The Hamiltons, my unfriends, had the next respect; and that I should esteem

the issue of her body would be the more affectionate to me and mine, than any other that could attain to that crown. And so it should be meetest, that she affirmed her dismission made in Lochlevin, and we to abstract the letters of her hand-write, that she should not be defamed in England. My reply to that was, how the matter had passed in Parliament, and the letters seen of many, so that the abstracting of the same could not then secure her to any purpose, and yet should we, in that doing, bring the ignominy upon us; affirming it would not be fair for us that way to proceed, seeing the Queen's Majesty of Eugland was not made privy to the matter as she ought to be, in respect we were purposely come in England for that end. and for the - of the grants of our cause. The Duke's answer was, he would take in hand to handle matters well enough at the court. After this, on the occasion of certain articles, that were required to be resolved on before we entered on the declaration of the very ground of our action. we came up to the court; where some new commissioners were adjoined to the former, and the hearing of the matter ordained to be in the parliament-house at Westminster, in presence of which commissioners of the said Queen, and through the - rebuking of the Queen of England's own commissioners, we uttered the whole of the action, and produced such evidences, letters, and probations, as we had, which might move the Queen's Majesty to think well of our cause. Whereupon expecting her Highness' declaration, and seeing no great likelihood of the same to be suddenly given, but daily motions then made to come to an accord with the said Queen, our matters in hand in Scotland, in the mean season, standing in hazard and danger, we were put to the uttermost point off our wit, to imagine whereunto the matters would tend, tho' albeit we had left nothing undone for justification of our causes, yet appeared no end, but continual motions made to come to some accord with the Queen, and restore her to whole or half reign. I had no other answer to give them, but that I should neither do against conscience or honour in that matter. Notwithstanding, seeing this my plain answer wrought no end nor dispatch to us, and that I was informed that the Duke began to mislike of me, and to speak of me, as that I

Probably adulterer.

had reported of the said Queen irreverently, calling her—and murderer, I was advised to pass to him, and give him good words, and to purge myself of the things objected to me, that I

should not open the sudden entry of his evil grace, nor have him to our enemy—considering his greatness. It being therewithal whispered and shewed to me, that if I departed, he standing discontented and not satisfied, I might peradventure find such trouble in my way, as my throat might be cut before I came to Berrick. And therefore, since it might well enough appear to her marriage, I should not put him in utter despair, that my good will could not be had therein. So few days before my departing, I came to the park in Hampton court, where the Duke and I met together, and there I declared unto him that it was come to my cars, how some misreport should be made of me to him, as that I should speak irreverently and rashly of the said

Probably suspect.

I could not love her, nor be content of her preferment, howbeit he might persuade himself of the contrary; for as she once was the person in the world that I loved best, having that honour to be so near unto her, and having received such advancement and honour by her, I was not so ungrate or so unnatural ever to wish her body harm, or to speak of her as was untruly reported of me (howsoever the truth was in the self), and as to the preservation of her son, now my sovereign, had moved me to enter into this

Probably

cause, and that her own pressing was the occasion of that was uttered to her —— whensoever God should move her heart to repent of her

bypast behaviour and life, and after her known repentance that she should be separate from that ungodly and unlawful marriage that she was entred in, and then after were joined with such a godly and honourable a personage as were affectioned to the true religion, and whom we might trust, I could find in my heart to love her, and to shew her as great pleasure, favour, and good will, as ever I-did in my life; and in case he should be that personage, there was none whom I could better like of, the Queen - in --- of England being made privy to the matter, and she allowing thereof, which being done. I should labour in all things that I could to her honour and pleasure, that were not prejudicial to the King my sovereign's estate, and prayed him not to think otherwise of me, for my affection was rather buried and hidden within me, awaiting until God should direct her to know herself, than utterly alienated and abstracted from her; which he seemed to accept

in very good part, saying, Earl of Murray, thou thinks of me that thing, whereunto I will make none in England or Scotland privy, and thou hast Norfolk's life in thy hands. So departing, I came to my lodging, and by the way and all night, I was in continual thought and agitation of mind. how to behave myself in that weighty matter, first imagining whereunto this should tend, if it were attempted without the Queen's Majesty of England's knowledge and good will, this realm, and I myself in particular, having received such favour and comfort at her Highness's hands, and this whole isle such peace and quietness, since God possessed her Majesty with her crown. And on the other part. seeing the Duke had disclosed him to me, protesting, none other were or should be privy to our speech, I tho't I could not find in my heart to utter any thing that might endanger him; moved to the uttermost with these cogitations, and all desire of sleep then removed, I prayed God to send me some good relief and outgate, to my discharge and satisfaction of my troubled mind, which I found indeed; for upon the morn, or within a day or two thereafter, I entered in conversation with my Lord of Leicester, in his chamber at the court, where he began to find strange with me, that in the matter I made so difficult to him, standing so precisely on conference, and how when I had in my communication with the Duke, come so far --- and there he made some discourse with me, about that Probably which was talke betwixt us, I perceiving that disclosed. the Duke had ---- the matter to my Lord of Leicester, and thinking me thereby discharged at the Duke's hands, therefore I repeated the same communication in every point to my Lord of Leicester, who desired me to shew the same to the Queen's Majesty, which I refused to do, willing him if he tho't it might import her Highness any thing, that he has one — by her Majesty, and for many benefits received at her Highness's hands, is obliged to wish her well, should make declaration of the same to her Majesty, as I understand by some speech of her Highness to me, he did. This my declaration to the Duke was the only cause that staid the violence and trouble prepared for me unexecuted, as I have divers ways understood. same declaration I was obliged to renew since in writings of --- sent to my servant John Wood. The sum whereof, I trust, he shewed the Duke, and something also I wrote to himself for it was tho't this should redeem some time, that the Duke should not suddenly declare him our

enemy, for his greatness was oft laid before me, and what friendship he had of the chief nobility in England, so that it might appear to the Queen's Majesty of England - so cold towards us, and doing nothing publicly that might seem favourable for us, we had some cause to suspect that her Highness should not be contrarious to the marriage when it should be proposed to her. The sharp message sent by her Majesty with the Lord Beyd, who had the like commission from the Duke tending so far to the said Queen's preferment, as it were proposing one manner of conditions from both, gave us to think that her Highness had been foreseen in the Duke's design, and that she might be induced to allow thereof. But howbeit it was devised in England, that the Lord of Lethington should come as from me, and break the matter to her Highness, as her Majesty in a letter declared that she looked for his coming, yet that devise proceeded never of me, nor the noblemen at the convention could no wise accord to his sending, nor allow of the matter motioned, but altogether misliked it, as bringing with it the same great inconveniences to the surety and quietness of this whole isle; for our proceedings have declared our misliking and dissallowance of the purpose from the beginning, and if we had pleased he was ready for the journey. And in likewise it was Probably devised to give consent that the ---- between divorce. the said Queen and Bothwell, should be suffered to proceed in this realm, as it was desired by the said Lord Boyd, by reason we could not understand what was the Queen's Majesty's pleasure, and allowance in that behalf - And whereas ye mean, that her Highness was not made privy of any such intention, the fault was not in me. The first motion being declared, as I have written, to my Lord of Leicester, and by him imparted to her Majesty, so far as I could perceive by some speech of her Highness's to me, before my departing. Thus I have plainly declared how I have been dealt withal for this marriage, and how just necessity moved me not to require directly, that which the Duke appeared so --- unto. And for my threatenings, to assent to the same, I have expressed the manner; the persons that laid the matter before me, were of my own company. But the Duke since hath spoken, that it was his writing which saved my life at that time. In conclusion, I pray you persuade her Majesty, that she let no speeches nor any other thing passed and objected to my prejudice, move her Majesty to alter her favour - towards me, or any ways to doubt of

my assured constancy towards her Highness; for in any

thing which may tend to her honour and surety, I will, while I live, bestow myself, and all that will do for me, notwith-standing my hazard or danger, as proof shall declare, when her Majesty finds time to employ me.

## No. XXXIV. (Vol. II. p. 242.)

William Maitland of Ledington, to my Lord of Leicester, March 20th, 1570, from Ledington.

THE great desolation threatened to this whole An original. realm, be the divisions thereof in dangerous factions, doth press me to frame my letters to your Lordship, in other sort, than were behovefull for me, if I had no other respect, but only to maintain my private credit; therefore I am driven to furnish them with matter, which I know not to be plausible, whereupon by misconstruing my meaning. some there may take occasion of offence, thinking that I rather utter my own passions, than go about to inform your Lordships truly of the state; but I trust my plain dealing shall bear record to the sincerity of my meaning; to make the same sensible, I will lay before your Lordship's eyes the plat of this country: which first is divided into two factions, the one pretending the maintenance of the King's reign, the other alledging the Queen to have been cruelly dealt withall, and unjustly deprived of her state; the former is composed of a good number of nobility, gentlemen. and principal burroughs of the realme, who shall have, as Mr. Randolph beareth us in hand, the Queen's Majesty your sovereign's allowance and protection; the other hath in it some most principall of the nobility, and therewithall. good numbers of the inferior sort, throughout the whole realm, which also look assuredly that all kings do allow their quarrel and will aid them accordingly. What consequence this division will draw after it, I leave it to your Lordship's consideration: there is fallen out another division, accidentally, by my Lord Regent's death, which is like to change the state of the other two factions, to increase the one, and diminish the other, which is grounded upon the regiment of the realm. Some number of noblemen aspire to the government, pretending right thereto by reason of the Queen's demission of the croun, and her commission granted at that time for the regiment during the King's minority; another faction doth altogether repine against that division, thinking it neither fit nor tolerable, that three or four of the meanest sort amongst the Earls, shall presume to challenge to them-

selves a rule over the whole realme, the next of the blood. the first in rank, the greatest alway both for the antientry of their houses, degree, and forces, being negleckted; this order they think preposterous, that the meaner sort shall be placed in public function to command, and the greater shall continue as private men to obey; besides that, they think if the commission had in the beginning been valewable (which the most part will not grant), yet can't not be extended to the present, for that the conditions thereunto annexed are ceased, and so the effect of the whole void; the latter part of this division hath many pretences, for besides the Queen's faction, which is wholly on that side, a great number of these that have heretofore professed the King's obedience, do fayour the same, and will not yield to the government of the other, whose preferment for respects they mislike, when the Queen's faction shall be increased with a part of the King's. and these not of least substance, and vow may judge what is like to ensue. Another incident is like to move men to enter in further discourses; it is given out here in Scotland, that the Queen's Majesty is setting forth some forces towards the border, which shall enter this realm, to countenance these that aspire to the regiment, and suppress the contrary faction, and bruits are spread, that the same shall be here out of hand. These that think themselves of equal force with their contrary faction at home, or rather an overmatch to them, yet not able to encounter with the forces of another prince, rather than yield to their inferiors, will, I fear, take advice of necessity, and evill councillors, and seek also the maintenance of some foreign prince, whereby her Majesty (altho' no further inconvenient were to be feared) must be driven to excessive charges; and it would appear there were a conspiracy of all the elements at one time to set us together by the ears, for now, when the rumour of your forces coming towards the border is spread abroad, even at the same time is arrived at Dumbarton a galzeon, with a messenger sent expresly from the King of France, to that part of the nobility that favours the Queen, to learn the state of the country, and what support they lack or desire, either for furtherance of her affairs, or for their own safety, assuredly this message will be well received, and suffered accordingly. This is the present state of Scotland. Now, if your Lordship would also know my opinion, how to choice the best as the case standeth, I will in that also satisfie your Lordship. I am required from them to deal plainly, and your Lordship shall judge whether I do so or not; for I think it plain

dealing, when I simply utter my judgment, and go not about to disguise my intents. I trust the Queen's Majesty hath a desire to retain at her devotion the realme of Scotland, which she hath gone about to purchase, with bestowing great charges, and the loss of some of her people; this desire is honourable for her Highness, profitable for both the countreys, and of none to be disallowed; specially if it be (as I take it) to have the amity of the whole realm, for it is not a portion of Scotland can serve her turn, nor will it prove commodious for her to suit the friendship of a faction of Scotland, for in so doing in gaining the best she may lose the more, and the same would bring all her actions with us in suspicion, if she should go about to nourish factions amongst us, which meaning I am sure never entered into her Majesty's heart; then if it be the friendship of the whole she doth demand, let her not, for pleasure of one part, go about to overthrow the remnant, which will not be so faisable as some may give her to understand; but rather by way of treaty, let her go about to pacify the whole state, bring the parties to an accord, reduce us all by good means to an uniformity, so shall she give us all occasion to think well of her doings, that she tendeth our wealth, and provoks us universally to wish unto her Majesty a most prosperous continuance; by the contrary, if, for the pleasure of a few, she will send forces to suppress these whom they mislike, and so consequently offend many, men be not so faint hearted but they have courage to provide for their own safety, and not only will embrace the means partly offered, but will also procure further, at the hand of other princes. This for mine own part I do abhorr, and protest I desire never to see forces of strangers to set foot within this land; yet I know not what point necessity may drive men into; as if men in the middle of the sea were in a ship, which suddenly should be set on fire, the fear of burning would make them leap into the sea, and soon after the fear of the watter would drive them to cleive again to the fired ship; so for avoiding present evil, men will many times be inforced to have recourse to another, no less dangerous. Trust me, forces will not bring forth any good fruit to her Majesty's behove, it must be some way of treaty shall serve the turn, wherein by my former letters your Lordship doth know already what is my judgment; you see how plainly I do write, without consideration in what part my letters may be taken, yetmy hope is that such as will favourably interpret them, shall think that I mean as well to her Majesty and that realme, as these that will utter other language. I wish the continuance of the amity betwixt the two countrys, without other respect, and will not conceal from her Majesty anysthing, to my knowledge, tending to the prejudice thereof; if I shall perceave her Majesty taking frank dealings in evil part, I shall from thenceforth forbear; in the mean season, I will not cease to trowble your Lordship, as I shall have occasion towrite, and so I take my leave of your Lordship.

No. XXXV. (Vol. II. 247.)

Letter of Queen Elisabeth to the Earle of Susseks, July 2d, 1570.

RIGHT trusty and well-beloved cousin we greet Calderw. vou well: this day we have received your letters MS. His. of 28 the last month, with all other letters sent tory, vol. 2. from Scotland, and mentioned in your letters, p. 189. whereunto answer is desired to be given before the tenth of this month, which is a very short time, the weightiness of the matters, and the distance of the places considered: nevertheless we have, as the shortness could suffer it, resolved to give this answer following, which we will that yow, by warrand hereof, shall cause to be given in our name to the Earl of Lennox and the rest of the noblemen conveend with him. Where it is by them, in their letters and writings alledg'd, that for lack of our resolute answer concerning the establishing of the regiment of the realm under their young King, great inconveniences have happened, and therefore they have deferred now at their last convention to determine of the samine, who shall have the place of governour, until the 21st this month, before which time they require to have our advise, in what person or persons the government of that realm shall be established, we accept very thankfull the goodwill and reputation they have of us, in yielding so frankly to require and follow our advise in a matter that toucheth the state of their King. theirselves, and realm so near, wherein as we perceive that by our former forbearing to intermeddle therein they have taken some discomfort, as though that we would not have regard to their state and suerty, so, on the other part, they of their wisdoms ought to think that it might be by the whole world evil interpreted in us to appoint them a form of government, or a governour by name; for that howsoever we should mean well if we should do so, yet it could not be without some jealousy in the heads of the estate, nobility, and community of that realm, that the government thereof should be by me specially named and ordain'd; so as finding difficulty on both parts. and yet misliking most that they should take any discomfort by our forbearing to show our mind therein, we have thought in this sort for to proceed, considering with ourselves how now that realm had been a good space of time ruled in the name of their King, and by reason of his base age governed heretofore by a very careful and honourable person, the Earle of Murray, untill that by a mischievous person (an evil example) he was murdered, whereby great disorder and confusion of necessity had, and will more follow, if determination be not made of some other speciall person or persons to take the charge of governour, or superior ruler, speciall for administration of law and justice, we cannot but very well allow the desire of these Lords to have some speciall governour to be chosen; and therefore being well assured, that their own understanding of all others is best to consider the state of that realm, and to discern the abilities and qualities of every person meet and capable for such a charge, we shall better satisfic ourselves, whom they by their common consent shall first choose, and appoint to that purpose, then of any to be by us aforehand uncertainly named; and that because they shall perceave that we have care of the person of their King, who by nearness of blood, and in respect to his so young years, ought to be very tender and dear to us. we shall not hide our opinion from them, but if they shall all accord to name his grandfather, our cousin, the Earl of Lennox, to be governor alone, or jointly with others (whom we hear to be in the mean time by their common consent appointed Lieutenant-general), reason moveth us to think that none can be chosen in that whole realm that shall more desire the preservation of the King, and be more meet to have the government for his safety, being next to him in blood of any nobleman of that realm, or elsewhere; and vet hereby we do not mean to prescribe to them this choice, except they shall of themselves fully and freely allow thereof. Furthermore, we would have them well assured, that whatsoever reports of devises are or shall be spread or invented. that we have already yielded our mind to alter the state of the King or government of that realm, the same are without just cause or ground by us given; for as we have already advertized them, that although we have yielded to hear, which in honour we could not refuse, what the Queen of Scots on her part shall say and offer, not only for her own assurance, but for the wealth of that realm, yet not knowing what the

same will be that shall be offered, we mean not to break the order of law and justice, by advancing her cause, or prejudging her contrary, before we shall delliberately and assuredly see, upon the hearing of the whole, some place necessary, and just cause to do; and therefore finding that realm ruled by a King, and the same affirmed by laws of that realm, and thereof invested by coronation and other solemnities used and requisite, and generally so received by the whole estates, we mean not, by yielding to hear the complaints or information of the Queen against her son, to do any act whereby to make conclusion of governments, but as we have found it, so to suffer the same to continue, yea, not to suffer it to be altered by any means that we may impeshe. as to our honour it doth belong, as by your late actions bath manifestly appeared, untill by some justice and clear cause, we shall be directly induced otherwise to declare our opinion; and this we would have them to know to be our determination and course that we mean to hold, whereon we trust they for their King may see how plainly and honourably we mean to proceed, and how little cause they have to doubt of us, whatsoever to the contrary they have or shall hear: and on the other part, we pray them of their wisdoms to think how unhonourable, and contrary to all human order it were for us, when the Queen of Scotland doth so many ways require to hear her cause, and doth offer to be ordered by us in the same, as well for matters betwixt ourselves and her, as betwixt herself and her son and his party of that realm, against which offers no reason could move us to refuse to give ear, that we should aforehand openly and directly, before the causes be heard and considered, as it were, give a judgment or sentence either for ourselves or for them whom she maketh to be her contraries. Finally, ye shall admonish them, that they do not, by misconceiving our good meaning toward them, or by indirect assertions of their adversary, grounded on untruths, hinder or weaken their own cause in such sort, that our good meaning toward them shall not take such effect towards them, as they shall desire. or themselves have need of. All this our answer ye shall cause be given them, and let them know, that for the shortness of time, this being the end of the second of this month, we neither could make any longer declaration of our mind, nor yet write any several letters, as if time might have served we would have done. 2d July 1570.

# No. XXXVI. (Vol. II. p. 247.)

#### The Bishop of Ross to Secretary Lidington from Chattisworth.

I HAVE received your letters, dated the 26th 15th June. of May, here at Chattisworth, the 10th of Janu-1570. ary, but on the receipt thereof I had written to you at length, like as the Queen did with my Lord Levingston, by which you will be resolved of many points contained in your said letter. I writ to you that I received your letter and credit from Thos. Cowv at London, and sent to Leicester to know the Queen of England's mind, whether if you should come here or not. He sent me word that she will no ways have you come as one of the commissioners, because she is yet offended with you; and therefore it appears good that ve come not hither, but remain where you are, to use your wisdom and diligence, as may best advance the Queen's affairs, for I perceive your weill and safety depends thereon, in respect to the great feid and ennimity born against you by your Scots people, and the great heirship taken of your father's landis; both were sure demonstrations of their malice. Yet I am encouraged by your stout and deliberate mind. Assure yourself no diligence shall be omitted to procure supports forth off all parts where it may be had. We will not refuse the aid neither of Papist, Jew, nor Gentil, after my advice; and to this end, during this treaty, let all things be well prepared. And seeing my Lord Seaton is desirous to go into Flanders, the Queen thinks it very necessary that he so do, for the Duke D'Alva has gotten express command of the King of Spain to give support, and I am sure that there he shall have aid both of Flanders and the Pope, for it abides only on the coming of some men of countenance to procure and receive the same. He must needs tarry there, on the preparations thereof, during the treaty, which will be a great furtherance to the same here. The Queen has already written to the Duke D'Alva for this effect, advertizing of his coming; there is certain sums of money coming for support of the Englishmen, as I wrote to you before, from the Pope. Whereupon I would he had a general commission to deal for them, and receive such sums as shall be given. The means shall be found to cause you be ansuerit of the sums you writ for, to be dispoisit upon the furnishing of the castle of Edinburgh, so being some honest and true man were sent to Flanders to

receive it, as said is, which I would you prepared and sent. Orders shall be taken for the metals as you writ of. We have proponit your avyce in entring to treat with the Queen of England, for retiring of her forces puntyoally for lack of aid. Your answers to the Englishmen are tho't very good, but above all keep you weill out of their hands, in that case, estote prudentes sicut serpentes. You may take experience with the hard dealing with me, how ye would be used if ye were here, and yet I am not forth of danger, being in medio nationis pravæ; alway no fear, with God's grace, shall make me shrink from her Majesty's service. Since the Queen of England has refused that you come here, it appears to me quod nondum est sedata malitia amorreorum, &c. and therefore if Athol or Cathenes might by any means be procured to come, they were the most fit for the purpose; Rothes were also meet, if he and I were not both of one sirname; so the treaty would get the less credit either in Scotland or here. Therefore avvs, and send the best may serve the turn, and fail not Robert Melvil come with them, whoever comes, for so is the Queen's pleasure. In my last packet, with James Fogo, to you, in the beginning of May, I sent a letter of the Queen's own handwriting to him, which I trust ye received. I am sorry ye come not for the great relief I hoped to have had by your presence, for you could well have handled the Queen of England, after her humour, as you were wont to do. The rest I refer to your good wisdom. praying God to send you health. From Chattisworth the 15th of January.

## No. XXXVII. (Vol. II. p. 264.)

The declaration of John Cais to the Lords of Grange and Lethington zoungare upon the 8th day of Oct. 1571.

Whereas you desire to know the Queen's Majesty's pleasure, what she will do for appeasing of these controversies, and therewith has offered yourselves to be at her commandment, touching the common tranquility of the whole isle, and the amity of both realms; her pleasure is in this behalf, that ye should leave off the maintenance of this civil discord, and give your obedience to the King, whom she will maintain to the utmost of her power.

And in this doing, she will deal with the Regent and the King's party to receive you into favour, upon reasonable

conditions for security of life and livings.

Also she says, that the Queen of Scotts, for that she has

practised with the Pope and other Princes, and also with her own subjects in England, great and dangerous treasons against the state of her own country, and also to the destruction of her own person, that she shall never bear authority, nor have liberty while she lives.

If ye refuse these gentle offers now offered unto you, she will presently aid the King's party with men, ammunition, and all necessary things, to be had against you.

Whereupon her Majesty requires your answer with

speed, without any delay.

# No. XXXVIII. (Vol. II. p. 273.)

Articles sent by Knox to the General Assembly, August 5th, 1572.

Calderw. MS. History, vol. 2. 356. First, desiring a new act to be made, ratifying all things concerning the King and his obedience that were enacted of before without any change, and that the ministers who have contravened the former acts be corrected as accordeth.

That sute be made to the Regent's grace, and nobility maintaining the King's cause, that whatsoever proceedeth in this treaty of peace, they be mindful the kirk be not prejudg'd thereby, in any sort, and they especially of the ministers that have been robbed of their possessions within the kirk during the time of the troubles, or otherwise dung and

injured, may be restored.

To suite at the Regent, that no gift of any bishoprick or other benefice be given to any person, contrary to the tonor of the acts made in the time of the first Regent of good memory; and they that are given contrar the said acts, or to any unqualified person, may be revoked and made null be an act of secret council; and that all bishopricks so vacand may be presented, and qualified persons nominat thereunto, within a year after the vaking thereof, according to the ordertaken in Leith be the commissioners of the nobility and of the kirk in the month of January last, and in special to complain upon the giving of bishoprick of Ross to the Lord Methyen.

That no pensions of benefices, great or small, be given be simple donation of any Lord Regent, without consent of the possessor of the saids benefices, having tittle thereto, and the admission of the superintendent or commissioners of the province where this benefice lyeth, or of the bishops lawfully

elected according to the said order taken at Leith; and desire an act of council to be made thereupon, until the next Parliament, wherein the samine may be specially enacted. with inhibition to the lords of session to give any letters, or decreets, upon such simple gifts of benefices or pensions not being given in manner above rehearsed, and that the kirk presently assembled declare all such gifts null, so far as lyeth in their power.

That the first form of presentation to benefices, which were in the first and second Regent's time, be not chang'd as now it is commonly; but that this clause be contained in the presentation, that if the persons presented make not residence, or be slanderous, or found unworthy either in life or doctrine be the judgment of the kirk (to which alwise he shall be subject), or meet to be transported to another room at the sight of the kirk, the said presentation, and all that shall fall thereupon, shall be null and of no force nor effect: and this to have place also in the nomination of the bishops.

That an act be made in this assembly, that all things done in prejudice of the kirk's assumption of the third, either by papists or others, by giving of fews, liferents, or taks, or any otherwise disponing the said assumed thirds, be declared null, with a solemn protestation, the whole kirk dissasenteth thereto.

That an act be made decerning and ordaining all bishops. admitted to the order of the kirk now received, to give account of their whole rents, and intromissions therewith, once in the year, as the kirk shall appoint, for such causes as the kirk may easily consider the same to be most expedient and necessar.

Anent the jurisdiction of the kirk, that the same be determined in this assembly, because this article hath long been postponed, to make sute to the Regent and council for remedy against messengers and excommunicate persons.

Last, That orders be taken anent the procurers of the kirk. who procure against ministers and ministry, and for sutting of justice of the kirk's actions in the session.

# No. XXXIX. (Vol. II. p. 278.)

Declaration of Henry Killigrewe, Esq. upon the peace concluded the 23d Feb. 1572.

BE it known to all men, by these presents, that I, Henry Killigrowe, Esq. ambassador for the Queen's Majesty of England, Forasmuch as, at the earnest motion and solicitation being made to me, on her Highness's behalf, there is accord and pacification of the public troubles and civil war within this realm of Scotland agreed and concluded, and the same favourably extended towards the Right Honourable George Earl of Huntly, Lord Gordon and Baidzenoch, and the Lord John Hamilton, son to the Duke's Grace of Chastellarault, and commendatour of the abbey of Abirbrothock. for the surety of the lives, livings, honoms, and goods of them, their kinfolks, friends, servants, and partakers, now properly depending on them; in treating of the which said pacification, the murders of the late Earl of Murray, uncle, and the Earl of Levenax, grandfather, late Regent to the King's Majesty of Scotland his realm and lieges, as also an article touching the discharge for the fructis or moveable goods which the said persons have taken fra personis professing the King's obedience, before the damages done or committed by them, since the 15th day of Junij 1567, and before the penult day of July last by passed, by reason of the common cause or any thing depending thereupon, being thought by the King's commissaries matteris of such wecht and importance, as the King's present Regent could not conveniently of himself remit or discharge the same; yet in respect of the necessity of the present pacification, and for the weil of the King, and common quietness of this realm and lieges, it is accorded, that the matters of remission of the said murderers, and of the discharge of the said fructis, moveable goods, and other damages, be moved by the persons desiring the said remissions and discharge to the Queen's Majesty my sovereign, as to the Princess nearest both in blood and habitation to the King of Scots. whatsoever her Majesty shall advise and councel touching the said remission and discharge, the said Lord Regent, for the weil of the King and universal quietness of the realm of Scotland, shall perform, observe, and fulfil the same. And in likewise, the said Earl Huntly and Commendatour of Abirbrothock, being urged to have delivered pledges and hostages for observation of the conditions of the said accord and pacification, hath required me in place thereof, in her Majesty's name, by virtue of my commission, to promise for them, that they shall truly and faithfully observe and keep the said pacification, and all articles and conditions thereof, for their parts, and that it would please her Majesty to interpose herself, as surety and cautioner for them to that effect, to the King's Majesty of Scotland, their sovereign, and his said Recent, which I have done and promise to do, by virtue

of her Majesty's commission, as by the honourable and plain dealing of the said Earl and Lord, their intention to peace well appears, the same being most agreeable to the mind of the Queen's Majesty my sovereign, which so long by her ministers hath travelled for the said pacification, and in the end, at her motion and solicitation, the same is accorded. knowing her Majesty's godly desire, that the same may contime unviolate, and that the noblemen and others now returning to the King's obedience shall have sufficient surety for their lives, livings, honours, and goods. Therefore, in her Majesty's name, and by virtue of my commission, I promise to the aforesaid Earl Huntly and Commendatour of Abirbrothock, that by her Majesty's good means, the said remission and discharge shall be purchased and obtained to them, their kinfolks, friends, servants, and partakers, now properly depending upon them (the persons specified in the first abstinance always excepted); as also, that the said pacification shall be truly observed to them, and that her Majesty shall interpose herself as conservatrix thereof, and endeavour herself to cause the same to be truly and sincerely kent in all points and articles thereof accordingly. In witness whereof I have to this present subscribed with my hand, and sealed the same with mine own seal, the 13th day of Feb. Anno Domini 1572. And this be performed by me. betwixt the date hereof, and the Parliament which shall be appointed for their restitution, or at the furthest before the end of the said Parliament. Sie subscribitur.

The Bishop of Glasgow's Note concerning the Queen of Scotland's dowry.

THE Queen of Scotland, Dowager of France, had for her dowry, besides other possessions. Cott. lib. Calig. B. 4. contracted and given to her by the King and

estates of Parliament; which dukedom she possessed peacefully till 1576, and then, upon the pacification betwixt the King and Mons, his brother, to augment whose appenage this dutchy was given, to which the Queen of Scotland yielded upon account of princes who were her near relations, provided the equivalent which was promised her should be faithfully performed. So that year, after a great many sollicitations, in lieu of that dutchy, she had granted her the county of Vermaudaise, with the lands and bailiwicks of Sculey and Vetrey; tho' 'tis known that county and the other lands were not of equal value with Turene.

but was promised to have an addition of lands in the neighbourhood to an equal value. Upon this letters patent were granted, which were confirmed in the courts of parliament, chamber of accompts, court of aids, chamber of the treasury, and others necessary; upon which she entered into possession of that country, &c. Afterward, by a valuation of the commissioners of the chamber of accompts, it was found that the revenue of that county, &c. did not amount to those of Turene by 3000 livres. But instead of making up this deficiency according to justice, some of the privy-council, viz. M. de Cheverny, the presidents of Bellievre, Nicocholay, and St. Bonet, in the name of the King, notwithstanding of her aforesaid losses, did selland alienate the lands of Senlis, and the dutchy of Estaimpes, to Madam de Montpensier, from whom the King received money; of which sale the counsellors aforesaid obliged themselves to be guarantees, which hath hindered the aforesaid Queen to have justice done her. So that Madam de Montpensier hath been put in possession of these lands of Senlis, contrary to all the declaration, protestation, and assurances of the King of France to Queen Mary's ambassadors. So that the Queen of Scotland is dispossessed of her dowry, contrary to all equity, without any regard to her quality

# No. XL. (Vol. II. p. 283.)

#### A Letter from the Lord of Lochlevin to the Regent Mortoun.

3d March, It will please your Grace, I received your 1577. E. of Grace's letter, and has considered the same. Mortoun's The parson of Camsey was here at me before Archives. the receit thereof, directed fra my Lord of Mar Bund. B. and the master, anent my last written, which was No. 19. the answer of the writing that the master sent to me, which I send to your Grace, desiring me to come to Stirling to confer with them. I had given my answer before the receit of your Grace's letter, that I behuiffit to be besyd Sanct Androis, at ane friend's tryst, which I might not omit; I understand by my said cousin, that the King's Majesty is to write to divers of the nobility to come there, anent your Lordship's trial, and that he had written before his departing to my Lord Monthrois. I understand likewise, he will write to your Grace to come there for the same effect, which I tho't good to make your Grace foreseen of the same. praying your Grace, for the love of God Almighty, to look upon

the best, and not to sleep in security, but to turn you with unfeigned heart to God, and to consider with yourself, that when the King's Majesty was very young, God made him the instrument to divest his mother from her authority, who was natural Princess, for offending of his Divine Majesty, and that there ran no vice in her, but that the same is as largely in you, except that your Grace condescended not to the destruction of your wife. For all to harlotry and ambition, I think your Grace has as far offended God, and far more in avaritiousness; which vycis God never left unplagued, except speedy repentance, which I pray God grant to your Grace, for otherwise your Grace can never have the love of God nor man. I pray your Grace flatter not yourself; for if your Grace believes that ye have the goodwill of them that are the King's good-willers, ye deceive yourself; for surely I see perfectly that your own particulars are not contented, lat be the rest, and that more principally for your hard dealing. I pray your Grace, beir with me that I am thus hamlie, for certainly it proceeds from no grudge, but from the very affection of my heart towards your Grace, which has continued since we were acquainted. And now I see, because the matter stands in your Grace's handling with the King's Majesty, for certainly if your Grace fall forth with him now, I see not how ye shall meet hereafter; pray I your Grace to call to God, and look on the best, and cast from your Grace both your vices, to wit, ambition and avaritiousness. I am riding this day to Sanct Androis, and trust to return on Wednesday at the farthest. If your Grace will command me in any offices that are honest, that I may do your Grace pleasure in at Stirling, advertise of your Grace's mind, and shall do to my power and knowledge, and this with my heartlie, &c. &c.

#### To our Trusty Cousin the Lord Lochleven.

From the original. E. of Morton's Archives. Bund. B. No. 31.

TRUSTY Cousin, after our most hearty commendations, we received your letter of the 3d of March, and as we take your plainness therein in good part, as proceeding from a friend and kinsman, in whose good affection towards us we never doubted, so ye may not think it strange that we purge ourselves so far of your accusation, as if conscience we find not ourselves to

have offended in. As touching our offence to God, we intend not to excuse it, but to submit us to his mercy; for

ambition surely we think none can justly accuse us; for in our private estate we could, and can live as well contented. as any of our degree in Scotland, without further aspiring. The bearing too the charge of the government of the realm. indeed, mon lead us, or any other that shall occupy that place, not simply to respect ourself, but his Majesty's rowme, which we supply, and therein not transcending the bounds of measure, as we trust it shall not be found we have done, it ought not to be attributed to any ambition in For as soon as ever his Majesty shall think himself ready and able for his own government, none shall more willingly agree and advance the same nor I, since I think never to set my face against him, whose honour, safety, and preservation has been so dear unto me, nor I will never believe to find otherwise at his hand than favour, although all the unfriends I have in the earth were about him, to persnade him to the contrary. As we write unto you, our friendly dealing and confidence in the house of Mar is not thankfully acquit, as we trust yourself considers; but because the ambassadors of England, my Lord of Angus, the chancellor, treasurer, and some noblemen rides west this day to see the King, we pray you heartily address yourself to be there as soon as ye can, and as ye shall find the likelihood of all things, let us be advertized thereof with your own advice, by Alex'. Hay, whom we have thought good to send west, seeing my Lord of Angus from Stirling rides to Douglas. And so we commit you in the protection of God. At Holyrood house, the 4th of March, 1577.

For the avaritiousness laid to our charge, indeed it lies not in us so liberally to deal the King's geare, as to satisfy all cravers, nor never shall any sovereign and native-born Prince, let be any officer, eschew the disdains of such as thinks them judges to their own reward; in many causes I doubt not to find the assistance of my friends; but where my actions shall appear unhonest, I will not crave their assistance, but let me bear my own burthen.

No. XLI. (Vol. II. p. 304.)

Letter of Walsingham's to Randolph, Feb. 3, 1580.1.

STR.

Cott. Lib.
Cal. C. 6.

I HAVE received from my Lord Lieutenant the copy of your letter of the 25th of the last, directed unto his Lordship, containing a report of your negotiation with the King and his council, in your

second audience, wherewith having made her Majesty acquainted, she seemed somewhat to mislike that you should so long defer to deal for the enlargement of Empedocles. But I made answer in your behalf, that I thought you were directed by the advice of the said Empedocles's friends, in the soliciting of that cause, who knew what time was fittest for you to take to deal therein, with most effect, and best success; with which answer her Majesty did in the end rest very well satisfied, touching that point.

Your putting of us in hope that D'Aubigny might easily be won at her Majesty's devotion, was at first interpreted to have been ironic spoke by you. But since it seemeth you insist upon it, I could wish you were otherwise persuaded of the man, or at least kept that opinion to yourself; for considering the end and purpose of his coming into Scotland, as may be many ways sufficiently proved, was only to advance the Queen's liberty, and reception into that government, to overthrow religion, and to procure a foreign match with Villenarius, wherein the inclosed copy, which you may use to good purpose there, shall partly give you some light; there is no man here can be persuaded that he will change his purpose for so small advantage as he is likely to find by it, and therefore you shall do well to forbear to harp any more upon that string, as I have already written to you. The Prince of Orange sending, I fear, will not be in time that it may do any good; for besides that these people are in themselves slow in their resolutions, their own affairs are at present so great, their state so confused, and the Prince's authority so small, that he cannot so soon take order in it; and yet, for mine own part, I have not been negligent or careless in the matter, having more than three weeks past sent one about it, from whom, nevertheless, I do yet hear nothing. The letters you desire should be written thither by the French ministers, I have given order to Mr. Killingrew to procure, who, I doubt not, will carefully perform it, so that, I hope, I shall have them to send you by the next. And so I commit you to God. At Whitehall, the 3d of February, 1580.

Your very loving cousin and servant.

FRA. WALSINGHAM.

This letter is an original, and in some parts of it wrote in cyphers and explained by another hand. By Empedocles is understood Morton. By Villenarius, the King of Scots. D'Aubigney is marked thus o\_\_\_\_\_1\_\_\_\_o.

#### 3d Feb. 1580.

Sundry notes gathered upon good diligence given, and in time to be better manifested, being now thought meet to be in convenient sort used and laid against D'Aubigny, to prove him abusing the King, the nobility, and that state.

Cott. Lib. Cal. C. 6. An original. FIRST, it hath been informed by credible means, Clat D'Aubigney was privy and acquainted with La Navè the King's mother's secretary, coming into Scotland, and of his errand there, tending chiefly to persuade the King to

nal. there, tending chiefly to persuade the King to think and esteem it an evil president for Princes that subjects might have power to deprive their lawful sovereigns. as they did his mother, who was not minded, by any mean, to defeat him, either of the present government of that realm, or yet of the possession of the crown and inheritance thereof, but rather to assure the same to him; and that for the accomplishment of that assurance, the King should have been advised and drawn to have governed, for some short time, as Prince, calling D'Aubigney to rule as governor of the Prince, by commission from the Queen his mother, until the King's enemies were suppressed; after which time D'Aubigney should have power given to establish and resign that kingdom to the King, by his mother's voluntary consent, whereby all such, as had before been in action against the Queen or her authority, might be brought to stand in the King's mercy. And for that the Kingmight live in more surety, D'Aubigney should be declared both second person in succession of that crown, and also Lieutenant General of Scotland, and that D'Aubigney before his departure out of France, received commission from the King's mother to the effects remembered, or near the same. That in this behalf he had conference with the Bishops of Glasgow and Ross, and with Sir James Baford, with which persons, and with the Duke of Guise, he had and hath frequent intelligence; and by Sir James Baford he was advised to confer with the Lord John Hamilton before his repair into Scotland, whereunto he agreed, and yet afterwards he sent one John Hamilton to the said Lord John to excuse him in this part, alledging, that he did forbear to come to him, lest thereby he should marr or hinder greater effects to be executed by him in Scotland.

That before his coming into that realm, the nobility and country were well quieted and united in good concord, with great love betwixt the King and nobility, and amongst

the noblesse; but he hath both drawn the King against sundry of the chiefest of his nobility, that have been most ready, and have expended their blood and possessions to preserve religion, and defend the King's person, his government and estate, and also hath given occasions of great suspicious and offence to be engendered betwixt the King and his nobility, and especially with such as have been in action against the King's mother, and her authority, who, by force and means of the said commission and practice, should have been brought into most dangerous condition; and who also may find themselves in no small perill while he possesses the King's ear, abuseth his presence, and holdeth such of the principal keys and ports of his realm, as he presently enjoyeth.

That he hath drawn the King not only to forget the great benefits done to him and his realme, by the Queen's Majesty of England, but also to requite the same with sundry signs of great unthankfulness, and wounding therewith the honour of her Majesty, and thereby hath adventured to shake the happy amity long time continued betwixt those

Princes.

And whereas these griefs were to be repaired by gentle letters and good offers, to have passed and been done betwixt them; in which respect the King and council having resolved to write to her Majesty, for her Highness better satisfaction in the late negotiation of Mr. Alexander Hume of Northberwick, had given order to the King's secretary to frame that letter: he minding to break the bond of amity in sunder, willed the secretary to be sure that nothing should be inserted in that letter whereby the King should crave any thing at her hands, seeking thereby to cut off all loving courtesies betwixt them, as by the declaration of the said secretary may be better learned, and thereupon further approved.

That under the hope and encouragement of D'Aubigney's protection, Alexander King presumed with that boldness to make his lewd harangue, and by his means hath hitherto escaped chastisement and correction due for his offence.

That Sir James Baford, condemned of the slaughter of the King's father, hath been called into the realm by Lennox, without the privity of the King. And whereas the said Sir James found in a green velvet desk, late the Earl of Bothwell's, and saw and had in his hands the principal band of the conspirators in that murder, and can best declare and witness who were authors and executors of the same; he is drawn by Lennox to suppress the truth, and to accuse such as he himself knoweth to be innocent; and as by ofder of law, will be so found, if they may have due trial, which, contrary to all justice, is by Lennox means denied.

This is the charge against D'Aubigney, mentioned in the foregoing letter by Walsingham; but by Basord they mean Sir James Balsour.

#### No. XLII. (Vol. II. p. 319.)

The copy of the King of France his directions sent to Scotland with Seineur de la Motte Fenelon. Translated out of the French.

Calderw. MS. History, vol. 3. p. 208. FIRST, on their Majestys most Christian part, he shall make the most honourable salutation and visiting to the most serene King of Scotland, their good brother and little son, that in him is possable.

To give him their letters that are closed, such and such like as they have written to him with their hands, and to show expressly the perfect friendship and singular affection that their Majestys bear to him, and to bring back the answer.

To take heed to the things which touch near the most serene King, to the effect that his person may be in no danger, but that it may be most surely preserved.

And that he be not hindered in the honest liberty that he ought to have, and that no greater or straiter guards be about him than he had before.

And such like, that he be not impeached in the authority that God hath given to him of King and Prince sovereign above his subjects, to the effect he may as freely ordain and command in his affairs, and in the affairs of his country, with his ordinary council, as he was used to do of before.

That his nobility, barons, and commonalty of his contry, may have their free liberty to resort to his serene Majesty without suspicion of greater guards or more armed men about his person than the use was, that they be not afraid and hindered to resort; and further, that the Seigneur de la Motte Fenelon sall liberally and freely speak to the said serene King and council, requiring the re-establishing of that that may or hath been changed or altered.

And that he may know if the principalls of the nobility and other men of good behaviour of the towns, and commonalty of the contry, conveens, and are content with the form of government presently with the said serene King, to the end that if their be any miscontent he may travaile to agree them together, and that he return not without the certainty of the samine.

And if he may understand that there be any who have not used them so reverently towards the said serene King their sovereign Lord, as the duty of their obedience required, that he may pray on this behalf of his Majesty most Christian, the said serene King his good brother, giving him councill wholly to forget the same, and exhorting them to do their duty towards his Majesty in time coming, in all respects with the obedience and true subjection they ought him.

And if the said Seigneur de la Motte perceives the said serene King to be in any manner constrained of his person, authority, liberty, and disposition of his affairs, than he used to be, and not convenient for his royal dignity, or as the sovereignty of a Prince doth require, that he use all moyen lawful and honest to place him in the samine, and that he employ as much as the credit of his most Christian Majesty may do toward the nobility and subjects of that contry, and as much as may his name, with the name of his crown towards the Scottish nation, the which he loves and confides in as much as they were proper Frenchmen.

And that he witness to the said serene King, and his estates, of his consent, and to all the nobility and principall personages of the contry, that his most Christian Majestie will continue on his part in the most ancient alliance and confederacy which he hath had with the said serene King his good brother, praying his nobility and contry, with his principall subjects, to persevere in the samine, in all good understanding and friendship with him; the which, on his part, he shall do, observing the samine most inviolable.

Further, his most Christian Majesty understanding that the serene King his good brother was contented with the Duke of Lenox, and his servise, the said Seigneur de la Motte had charge to pray his serene Majesty that he might remaine beside him to his contentment, believing that he should more willing entertain the points of love and confederace, betwixt their Majestys and their contrys, because he was a good subject to them both; and if he might not remain without some alteration of the tranquillity of his estate, that he might retire to his own house in the said

contry, in surenes, or if he pleased to return to France that he might surely—and if it pleases his screne Majesty, to cause beese and stay the impeachments that are made of new upon the frontiers, to the effect that the natural Frenchmen may enter as freely into the contry as they were wont to do of before.

And that there may be no purpose of diffamation, nor no speech but honourable of the most Christian King, in that contry, but such like as is spoken most honourably of the serene King of Scotland in France.

He had another head to propose, which he concealed till a little before his departure, to wit, that the Queen, the King's mother, was content to receive her son in association of the kingdom.

### No. XLIII. (Vol. III. p. 4.)

Lord Hunsdane to Sir Francis Walsingham, the 14th of August, 1584, from Berwich.

SIR.

According to my former letters, touching Calderw. my meeting with the Earl of Arran upon Wed-MS. Hisnesday last, there came hither to me from the tory, vol. 3. Earle, the Justice-clerk, and Sir William Stuart, р. 374. Captain of Dumbarton, both of the King's privice council, to treat with me about the order of our meeting, referring wholly to me to appoint the hour, and the number we should meet withal; so as we concluded the place to be Foulden, the hour to be ten o'clock, and the number with ourselves to be 13 of a side; and the rest of our troops to stand each of them a mile from the town; the one on the one side, the other on the other side, so as our troops were two miles asunder; I was not many horsemen, but I supplied it with footmen, where I had one hundred shot on horse, but they were very near 500 horse well appointed: According to which appointment, we met vesterday, and after some congratulations, the Earl fell in the like protestations of his good will and readiness to serve the Queen's Majesty, before any Prince in the world, next his sovereign, as he had done heretofore by his letters, and rather more; with such earnest vows, as, unless he be worse than a devil. her Majesty may dispose of him at her pleasure. This being ended, I entered with him touching the cause I had to deal with him, and so near as I could, left nothing unrehearsed

that I had to charge the King or him with any unkind dealing toward her Majesty, according to my instructions, which, without any delay, he answered presently, as re shall perceive by the said answers sent herewith; but I replying unto him, he amplified them with many moe circumstances, but to this effect. Then I dealt with him touching the point of her Majesty's satisfaction, for the uttering of such practices as has been lately set on foot for the disquieting of her Majesty and her estate, who thereof made sundry discourses, what marriages have been offered to his Majestie by sundrie Princes, and by what means the Earle has sought to divert them, and for what causes; the one, for that be marriage with Spain or France, he must also alter his religion, which as he is sure the King will never doe, so will he never suffer him to hearken unto it, so long as he hath any credit with him. He denys not but the King has been dealt withal be practices to deal against her Majesty, which has so far denied and refused to enter into, as they have left dealing therein: but whatsoever the King or he knoweth therein, there shall be nothing hidden from her Majesty, as her Majesty shall know very shortly: surely it seems by his speeches, that if the King would have yielded thereunto there had been no small company of French in Scotland ere now to disquiet her Majesty.—This being ended, I dealt with him earnestly for the stay of this Parliament which now approacheth; or at the least that there may be nothing done therein, to the prejudice of these noblemen and others now in England, for the forfaulting of their livings and goods: hereupon he made a long discourse to me, first of the Earl of Angus dealing about the Earle of Morton, then of his going out notwithstanding of sundrie gracious offers the King had made him; then of the road of Ruthven, how that presently after they had the King's Majesty in their hands, they imprisoned himself, dealt with the King for putting of the Duke out of the realme; the King refused so to do; they told him plainly that if he would not, he should have the Earl of Arran's head in a dish; the King asked what offence the Earle had made? and they answered it must be so and should be so; hereupon for the safeguard of Arran's life, the King was content to send away the Duke, and yet Arran afterwards sundrie times in danger of his life; I alledged unto him the King's letter to the Queen's Majesty, and his acts in council, that they had done nothing for his servise, and with his good liking and contentment, who answered me, he durst do no otherwise, nor could do any thing but that which pleased them, with such

a number of other their dealings with the King whilest he was in their hands as are too long to be written, and too bad if they were strue. I said the King might have let the Queen's Majesty's ambassador have known his mind secretly, and her Majesty would have relieved him; he answered, that the King was not ignorant that the apprehensions in that matter proceeded from Mr. Bow's practice, and thereby durst not impart so much to him, and vet the King was content, and did give remission to as many as would acknowledge their faults, and ask remission, and such as would not, he thought fit to banish, to try their further loyalty, in which time they conspired the King's second apprehension, and the killing of the Earle and others, and seduced the ministers to their faction; and yet not satisfied with these conspiracies and treasonable dealings (as he terms them), are entered into a third, being in England under her Majesty's protection, to dishonour her Majesty as far as in them lieth, or at least to cause the King conceive some unkindness in her Majesty, for harbouring of them; I wrote to yow what the conspiracy was, the taking of the King. the killing of the Earle of Arran, and some others, the taking of the castle of Edin<sup>r</sup>, and bringing home the Earles to take the charge of the King; all which (says he) is by Drummond confessed, and by the Provost of Glencudden not greatly denied, and the Constable of the Castle thereupon fled. The Earl brought Drummond with him as far as Langton, where he lay, to have confessed the conspiracy before me, but having at his lighting received a blow on his leg with a horse, so as he could bring him no further. I replied that I thought verily they would not work any such practices in respect of the Queen's Majesty, abiding within her realme, and if there be any such practices, they have proceeded from others, and they not privie unto them; and that if it be not apparently proved against them, that it will be thought to be some practice to aggravate the fault, and to make them the more odious to the King. He answered me, that it should be proved so sufficiently, that they should not be able with truth to deny it, for their own hands is to be showed to part of it, and therefore concluded, that if her Majesty should so press the King for them at this time, that would rather hinder this matter of the amity nor further it. and that since they seek chiefly his life, he could not, in any reason, seek to do them any good; and besides he assured me, that if he would, he dare not, this last matter being fallen out as it is; and surely if this matter had not

fallen out, I would not have doubted the restoring of the Earl of Mar very shortly, if her Majesty would have employed me therein; but for the Earl of Anges, I perceive the King is persuaded that both he, and the rest of the Douglasses, have conceived so mortal an hatred against him and the Earl of Arran, about the death of the Earl of Morton, as if they were at home to-morrow next, they would not leave to practise and conspire the death of them both, and therefore a hard matter to do any thing for him: finally, he concluded and required me to assure her Majesty from the King, that there shall nothing be hid from her, nor any thing left undone that may satisfie her Majesty with reason. and that the King shall never do any thing, nor consent to have any thing done in her prejudice, so long as he had any credit with him, or authority under him. Having thus far proceeded, he desired to shew me his commission, which is under the great seal, to himself only, which is as large as may be, and yet sundrie of the privile councel there with him, but not one in commission, nor present, nor near us all this time, having spent almost five hours in these matters; he presented to me the Master of Gray, who delivered to me a letter from the King in his commendation, whom I perceive the King means to send to her Majesty, and therefore requires a safe-conduct for his passage, which I pray yow procure, and to send it so soon as you may. I let him understand of the Lord Seaton's negociation with the French He swore to me, that Seaton was but a knave, and that it was partly against his will that he should be sent thither. But his commission and instruction being of no great importance, he yielded the sooner; and if Seaton has gone beyond his instructions, which Arran drew himself, he will make Seaton smart for it. Touching William Newgate and Mark Golgan, he protested he never heard of any such; he says there was a little poor soul, with a black beard, come thither a-begging, who said he was an enemy to Desmond, to which he gave a croun, but never heard of him since; and for any Scotsman going into Ireland, he says there is no such matter; if there be, there may be some few raskals that he knows not of: and touching the coming of any Jesuits into Scotland, he says it is but the slanderous devise of the King's enemys, and such as would have the world believe the King were ready to revolt in religion, who the world shall well see will continue as constant therein as what Prince soever professed it most; and the Earle himself does protest to me, that to his knowledge he never saw a Jesuit in his life, and did assure me if there was any in

Scotland, they should not do so much harm in Scotland, as their ministers would do, if they preach such doctrine as facy did in Scotland; and touching one Ballanden, of whom I wrote to yow, I heard from Mr. Colvil, the Earle avows constantly that he knows not, nor hath not heard of any such man, but he would inquire at the justice-clerk, and would inform me what he could learn of that. Thus I have made you as short a discourse as I can of so many matters, so long discoursed upon, but these are the principal points of all our talk, so near as I can remember it, and for this time I commit you to the Almighty. At Berwick, the 14th of August, 1584.

The King is very desirous to have my son Robert Carrie to come to him. I pray yow know her Majesty's pleasure.

Arran's Answer to the Grieffs or Articles proponed to the Lord Hunsdane, set down in another form.

As to the strait and severe persecution of all such as have been noted to have been well affected to the Queen's Majesty, it cannot appear they were either for that cause punished, or hardly dealt with, since his Majesty of late has been so careful and diligent to choice out good instruments to deal betwixt her Majesty and him, as his Majesty has done in electing of your Lordship and me; besides that, in all their accusations, their good will and affection born to her Majesty was, at no time, laid to their charge, but capital actions of treason many way tried now be the whole three estates, and more than manifest to the world

As for his Majesty inhibiting, by public proclamation, such as were banished, not to repair in England; the bruits and whisperings that came to his Majesty's ears of their conspiracies and treasons, which since syn they accomplished, so far as in them lay, moved his Majesty to inhibit them to repair to any place, so near his Majesty's realm, lest they should have attempted these things, which shortly they did attempt, being farther off, and more distant both by sea and land.

As for reception of Jesuits, and others, her Majesty's fugitives, and not delivering them according to his promise, as your Lordship propones, his Majesty would be most glad, that so it might fall out by your Lordship's traviles, that no fugitive of either realme should be received of either, and when so shall be, it shall not fail on his Ma-

esty's part, albeit in very deed this time bygone his Majesty has been constrained to receipt her Majesty's mean rebells and fugitives, contrar his good natural, since her Majesty hath receipt, in effect, the whole and greatest rebells and traitors his Majesty in his own blood ever had. As for the agreement with his Majesty's mother anent their association, his Majesty has commanded me, in presence of your Lordship's servant, to assure her Majesty and your Lordship, in his Majesty's name, that it is altogether false, and an untruth, nor any such like matter done yet.

His Majesty has also commanded me to assure your Lordship, that it is also false and untrue, that his Majesty has, by any means direct or indirect, sent any message to the Pope, or received any from him; or that his Majesty has dealt with Spain or any foreigners to harm her Majesty or her realm, which his Majesty could have no honour to do, this good intelligence taking place, as I hope in God it

shall.

As concerning the contemptuous usage of her Majesty's ministers sent unto his Majesty, his Majesty used none of them so, and if his Majesty had, sufficient cause was given by them, as some of their own writs do yet testify, as I more particularly showed your Lordship at Foulden at our late meeting.

# No. XLIV. (Vol. III. p. 7.)

The Scottish Queen's offers upon the effect of her liberty, propounded by her Secretary Naw, November, 1584.

Cott. Lib. THE Queen my mistress being once well

Calig. C. 8. assured of your Majesty's amity,

A Copy.

1. Will declare openly that she will (as it is sincerely her meaning) straitly to join unto your

Majesty, and to the same to yield and bear the chief honour and respect, before all other Kings and Princes in Christendom.

2. She will swear, and protest solemnly, a sincere forgetfulness of all wrongs which she may pretend to have been done unto her in this realm, and will never in any sort or manner whatsoever, shew offence for the same.

3. She will avow and acknowledge, as well in her own particular name, as also for her heirs and others descending of her for ever, your Majesty, for just, true, and lawful Queen of England.

4. And consequently, will renounce, as wellfor herself as

for her said heirs, all rights and pretences which she may claim to the crown of England, during her Majesty's life, and other prejudice.

5. She will revoke all acts and shews, by her heretofore made, of pretence to this said crown to the prejudice of your Majesty, as may be the taking of the arms and stile of Queen of England; by the commandment of King Francis her late lord and husband.

 She will renounce the Pope's bull for so much as may be expounded to turn in her favour, or for her behoof, touching the deprivation of your Majesty, and will declare that she

will never help and serve herself with it.

7. She will not prosecute, during your Majesty's life, by open force or otherways, any public declaration of her right in the succession of this realm, so as secret assurance be given unto her, or at the least public promise, that no deciding thereof shall be made in the prejudice of her, or of the King her son, during your Majesty's life, nor after your decease, until such time as they have been heard thereupon, in publick, free, and general assembly of the Parliament of the said realm.

8. She will not practise, directly or indirectly, with any of your Majesty's subjects, neither within nor out of your realm, any thing tending to war, civil or foreign, against your Majesty and your estate, be it under pretext of reli-

gion, or for civil and politick government.

9. She will not maintain or support any of your subjects declared rebels, and convicted of treason against you.

10. She will enter into the association, which was shewed her at Wingfield for the surety of your Majesty's life, so as there be mended or right explicated some clauses which I will shew to your Majesty, when I shall have the copy thereof, as I have before time required.

11. She will not treat with foreign Kings and Princes for any war or trouble against this state, and will renounce, from this time, all enterprises made or to be made in her

favour for that respect.

12. Furthermore, this realm being assailed by any civil or foreign war, she will take part with your Majesty, and will assist you in your defence with all her forces and means, depending of herself and with all her friends of Christendom.

13. And to that effect, for the mutual defence and maintenance of your Majesty, and the two realms of this isle, she will enter with your Majesty in a league defensive as

shall be more particularly advised, and will perswade as much as in her, the King her son to do the like. The leagues with all parts abroad remaining firm, and especially the antient league between France and Scotland, in that which shall not be against this present.

- 14. She will enter into a league offensive, having good assurance or secret declaration and acknowledgment of her right in the succession of this crown, and promise that, happening any breach betwixt France and this realm (which she prayeth God never to happen), the just value of her dowry shall be placed for her in lands of the revenue of the crown.
- 15. For assurance of her promises and covenants, she doth offer to abide herself in this realm for a certain time (better hostage can she not give than her own person), which, so as she be kept in the liberty here before propounded, is not in case to escape secretly out of this conntry, in the sickly state she is in, and with the good order which your Majesty can take therein.
- 16. And in case your Majesty do agree to her full and whole deliverance, to retire herself at her will out of this realm, the said Queen of Scots she will give sufficient hostage for such time as will be advised.
- 17. If she abide in this realm, she will promise not to depart out of it without your licence, so as it be promised unto her that her state, in such liberty as shall be accorded unto her, shall not be in any sort altered, untill after tryall to have attempted against your life, or other trouble of your estate.
- 18. If she go into Scotland, she will promise to alter nothing there in the religion which is now used there, she being suffered to have free exercise of her's for her and her household, as it was at her return out of France; and further, to pull out every root of new division between the subjects, that none of the subjects of Scotland shall be sifted for his conscience, nor constrained to go to the service of the contrary religion.
- 19. She will grant a general abolition of all offences done against her in Scotland, and things shall remain there as they are at this present, for that respect, saving that which hath been done against her honour, which she meaneth to have revoked and annulled.
- 20. She will travel to settle a sure and general reconciliation between the nobility of the country, and to cause to be appointed about the King her son, and in his council, such

as shall be fit for the entertainment of the peace and quiet

of the country, and the amity of the realm.

21. She will do her best to content your Majesty, in favour of the Scots lords banished and refuged hither, upon their due submission to their Princes, and your Majesty's promise to assist the said Queen and King of Scotland against them, if the happen to fall into their former faults.

22. She will proceed to the marriage of the King her son,

with the advice and good council of your Majesty.

23. As she will pass nothing without the King her son, so doth she desire that he intervene conjointly with her in this treaty, for the greater and perfecter assurance thereof; for otherwise any thing can hardly be established to be sound and continue.

24. The said Scotch Queen trusteth, that the French King, her good brother, according to the good affection which he hath always shewed her, and hath been afresh testified unto me by Mons. de Mannissiere for this said treaty, will very willingly intervene, and will assist her for the surety of her promises.

25. And so will the Princes of the House of Lorrain, following the will of the said King, will bind themselves thereunto.

26. For other Kings and Princes of Christendom, she will assay to obtain the like of them, if for greater solemnity and approbation of the treaty it be found to be necessary.

27. She doth desire a speedy answer, and final conclusion of the premises, to the end to meet in time with all

inconveniences.

28. And in the mean time, the more to strengthen the said treaty, as made by her of a pure and frank will, she desireth that demonstration be made of some releasement of her captivity.

Objections against the Scottish Queen, under Secretary Walsinghame's hand, November, 1584.

THE Queen of Scots is ambitious, and standeth ill affected to her Majesty, and therefore it cannot be but that her liberty should bring peril unto her Majesty.

That her enlargement will give comfort to Papists, and other ill affected subjects, and greatly advance the opinion had of her title as successor.

That as long as she shall be continued in her Majesty's possession, she may serve as it were a gage of her Majesty's

surety, for that her friends, for fear of the danger she may be thrown into, in case any thing should be done in her favour, dare not attempt any thing in the offence of her Majesty.

November, What course were fit to be taken with the Queen 1584. of Scots, either to be enlarged or not.

Cott. Lib.
Cal. 8.

The course to be taken with the said Queen may be considered of in three degrees; either,

1. To continue her under custody in that

state she now is.

2. To restrain her of the present liberty she now hath.

3. Or to set her at liberty upon caution.

1. Touching the first, to continue her under custody in that state she now is; it is to be considered, that the Princes that favour that Queen, upon the complaint she maketh of hard usage, are greatly moved with commiseration towards her, and promise to do their endeavour for her liberty, for which purpose her ministers solicit them daily.

And to move them the more to pity her case, she acquainteth them with her offers made to her Majesty, which appeared to be no less profitable than reasonable for her Majesty, so as the refusal and rejecting giveth her friends and favourers cause to think her hardly dealt withal, and therefore may, with the better ground and reason, attempt

somewhat for the setting of her at liberty.

It is also likely that the said Queen, upon this refusal, finding her case desperate, will continue her practice under hand, both at home and abroad, not only for her delivery, but to obtain to the present possession of this crown upon her pretended title, as she hath hitherto done, as appeareth. and is most manifest by letters and plots intercepted, and chiefly by that late alteration of Scotland, which hath proceeded altogether by her direction, whereby a gap is laid open for the malice of all her Majesty's enemies, so as it appeareth that this manner of keeping her, with such number of persons as she now hath, and with liberty to write and receive letters (being duly considered), is offensive to the Princes, the said Queen's friends; rather chargeable than profitable to her Majesty; and subject to all such practices as may peril her Majesty's person or estate, without any provision for her Majesty's safety, and therefore no way to be liked of.

2 G 3

2. Touching the second, to restrain her in a more straighter degree of the liberty she hath hitherto enjoyed.

It may at first sight be thought a remedy very apt to stop the course of the dangerous practices fostered heretofore by her; for true it is, that this remedy might prove very profitable, if the realm.of Scotland stood in that sort devoted to her Majesty, as few years past it did, and if the King of that realm were not likely, as well for the release of his mother, as for the advancement of both their pretended titles, to attempt somewhat against this realm and her Majesty, wherein he should neither lack foreign assistance, nor a party here within this realm: But the King and that realm standing affected as they do, this restraint, instead of remedying, is likely to breed these inconveniences following:

First, It will increase the offence, both in him and in the rest of the Princes her friends, that misliked of her

restraint.

Secondly, It will give them just cause to take some way of redress.

Lastly, It is to be doubted, that it may provoke some desperate ill-disposed person, all hope of her liberty removed, to attempt somewhat against her Majesty's own person (a matter above all others to be weighed), which inconveniency being duly considered, it will appear manifestly, that the restraint, in a straighter degree, is likely to prove a remedy subject to very hard events.

The latter degree, whether it were fit to set the said Queen at liberty, ministereth some cause of doubt, touching the manner of the liberty, in what sort the same is to be performed, whether to be continued here within the realm,

or to be restored into her own country.

But first, this proposition, before the particularities be

weighed, is to be considered in generality.

For it is very hard for a well-affected subject, that tendereth her Majesty's surety, and weigheth either the nature of the Scottish Queen, being inclined to ambition and revenge, or her former actions, what practices she hath set on foot most dangerous for her Majesty and this realm, to allow of her liberty, being not made acquainted with such causes, as time hath wrought, to make it less perilous than it hath been, nor with such cautions as may, in some sort, be devised to prevent both her ambition and malice; and therefore, to make this apparent.

It is to be considered, that the danger that was in the

mother, is now grown to be in the son. He pretendeth the same title she doth: Such as do affect her, both at home and abroad, do affect him (and he is the more dangcrous for that he is unmarried, which may greatly advance his fortune; and that he is a man, whereby he may enter into action in his own person); where she is restrained, he is at liberty; his own realm is now altogether at his devotion, and the party affected to this crown abased; so as the matter duly considered, neither her liberty nor restraint doth greatly alter the case for perils towards her Majesty, unless by such promises as may be made by way of treaty with her, the danger likely to grow from the King her son be provided for.

But in this behalf it may be objected, that so long as the mother remains in her Majesty's hands, the King will

attempt nothing for fear of his mother's peril.

To this objection it may be answered, first, That they hope that her Majesty, being a Prince of justice, and inclined to mercy, will not punish the mother for the son's offence, unless she shall be found, by good proof, culpable. Secondarily, That men will not be over hasty, considering in what predicament the King standeth touching his expectation of this crown, to advise any thing that in time future may be dangerous to the giver of such council as may reach to his mother's peril.

And lastly, The taking away of his mother, he being strong in the field through both foreign assistance, and a party here within the realm, will appear so weak a remedy (which may rather exasperate both him and her party, to proceed with more courage and heat to revenge, if any such hard measure should be offered unto her), as they will suppose, for the reason above specified, that no such extremity

will be used.

It may also be objected, that the setting of her at liberty will greatly encourage the Papists both at home and abroad; but herein, if the provision be duly considered, that may be made by Parliament, both here and there, they shall rather find cause of discomfort than otherwise.

These two doubts being resolved, and the perils that was in the mother appearing most manifestly to be seen in the son, accompanied with more danger, with due consideration had also of such remedies as may be provided for the preventing of the dangers that her liberty may minister just cause to doubt of; there will be good cause of hope found, that the same will rather breed benefit than perils.

Now it resteth, in what sort the said liberty shall be performed; if it shall be thought meet she shall be continued within the realm with some limitation, especially in that place where she now resideth, the country round about being so infected in religion as it is, it is greatly to be doubted that will very much increase the corruption, and falling away in that behalf. Besides, she should have commodity, with much more ease and speed, to entertain practices within this realm, than by being in her own country.

If abroad freely without limitation either in Scotland or France, then shall her Majesty lose the gages of her safety, then shall she be at hand to give advice in furtherance of such practices as have been laid for to stir trouble in this

realm, wherein she hath been a principal party.

For the first, it is answered before, that the respect of any perils that may befal unto her, will in no sort restrain her son. For the other, if it be considered what harm her advice will work unto herself, in respect of the violation of the treaty, and the provision that may be made in Parliament here, it is to be thought, that she will then be well advised, before she attempt any such matter, which now she may do without perill. Besides, such Princes as have interposed their faith and promise for her, cannot with honour assist her, wherein the French King will not be found very forward, who, in most friendly sort, hath lately rejected all such requests, propounded either by her, or her son's ministers, that might any way offend her Majesty. And so to conclude, seeing the cause of her grief shall be taken away; the French King gratified, who is a mediator for her, and will mislike that, by any Spanish practice, she should be drawn to violate her faith, that the rest of the Princes shall have no just cause of offence, but rather to think honourably of her Majesty, considering the Scottish Queen's carriage towards her, which hath deserved no way any such favour; the noblemen of Scotland shall be restored, who will be a good stay of such counsells as may tend to the troubling of this realm, especially having so good a ground of warrant as the Parliament to stand unto; the charges and perills which her practices might have bred to this realm shall be avoided; and lastly, the hope of the Papists shall be taken away, by such good provisions as in both the realms may be made, whereby the perills that might fall into her Majesty's own person (a matter of all others to be weighed), shall be avoided, when by the change that

may grow by any such wicked and ungodly practice, they shall see their case no way relieved in point of religion.

Reasons to induce her Majesty to proceed in the treaty under Secretary Walsingham's hand.

Cott. Lib.
Cal. C. 8. That such plots as have of late years been devised (tending to the raising of trouble within this realm) have grown from the Scots Queen's ministers and favourers, not without her allowance and

seeking: Or,

That the means used by the said ministers, to induce Princes to give car to the said plots, is principally grounded

upon some commiseration had of her restraint.

That the stay why the said plots have not been put in execution, hath proceeded, for that the said Princes have, for the most part, been entertained with home and domestic troubles.

That it is greatly to be doubted, that now their realms begin to be quiet, that somewhat will be attempted in her favours by the said Princes.

That it is also to be doubted, that somewhat may be attempted by some of her fautors in an extraordinary sort,

to the perill of her Majesty.

That for the preservation thereof, it shall be convenient for her Majesty to proceed to the finishing of the treaty, not long sithence begun between her and the said Queen.

# No. XLV. (Vol. III. p. 15.)

Letter of Q. Mary to Q. Elizabeth.

Madame ma bonne Seur,

Cott. Lib.
Col. B.
VIII. Fol.
147.
An original.

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M'ASSEURANT que vous avez eu communication d'une lettre de Gray que vostre homme Semer me livra hier soubz le nom de mon filz, y recognoissant quasi de mot a la mot mesmes raisons que le dit Gray m'escrivit en chific estant dernierement pres de vous desmonstrant la suffisance & bonne intention du personage, je

vous prieray seulement suivant ce que si devant je vous ay tant instantement importuné, que vous me permettiez desclaireir librement & ouvertement ce point de l'association d'entre moy & mon filz & me dessier les mains pour proceder avec lui comme je jugeray estre requis pour son bien & le mien. Et j'entreprendz quoy que l'on vous die & puisse en rapporter de faire mentir ce petit brouillon, qui

persuadé par aucuns de vos ministres a entrepris cette separation entre moy & mon enfant, & pour y commencer je vous supplie m'octroyer qui je puisse parler a ce iusticeclerk qui vous a este nouvellement envoyé pour mander par luy a mon filz mon intention sur cela, ce qui je me promis que ne me refuserez, quant ce ne seroit que pour demontrer en effect la bonne intention que vous m'avez asseurée avoir a l'accord & entretien de naturel devoir entre la mere & l'enfant qui dit en bonnes termes estre empesche pour vous me tenant captive en un desert ce que vous ne pourrez mieux desmentir & faire paroitre vostre bon desir a notre union que me donnant les moyens d'y proceder, & non m'en retenir et empescher comme aucune des vos ministres pretendent a fin de laisser toujours lieu a leur mauvais & sinistres practiques entre nous. La lettre porte que l'association n'est pas passée, aussi ne luv ai je jamais dit, bien que mon filz avoit accepté: & que nous en avions convenu ensemble, comme l'acte sigué de sa main. & ces lettres tant a moy, que en France en font foy, ayant donné ce meme temoignage de sa bouche propre a plusieurs ambassadeurs & personnes de credit, s'excusant de ne l'oser faire publier par craint de vous soulement, demandant forces pour vous resister d'avant de ce declarer si ouvertement estant journellement persuade au contraire par vos ministres, qui luy prometoyent avecque une entreire a Yorck le faire declairer votre heretier. Au surplus, Madame, quand mon enfant seroit si malheureux que de s'opiniastrer en cette extreme impieté & ingratitude vers moy, je ne puis penser que vous non plus qu'aucun aultre Prince de la Chretienté, le voulissiez eu cela applaudir ou meintenir pour luy favre acquerir ma malediction ains que plutos introviendrez pour luy faire recongnoitre la raison trop juste & evidant devant Dicu & les hommes. Helas & encores ne luy vouloier j'en ofter, mays donner avec droit ce qu'il tient par usurpation. Je me suis du tout commise a vous, & fidelement faites si il vous plest que je ne en soye pis qu'aupravant. & que le faulsete des uns ne prevale desvant la verite des vous, pour bien recevant mal, & la plus grande affliction que me scaurroit arriver a scavoir la perte de mon fils. Je vous supplie de me mander en cas qu'il persiste en cette m'esconnoissance de son devoir, que de luy ou de moy il vous plaist advouer pour legittime Roy ou Royne d'Ecosse, & si vous aves agreable de poursuivre avec moy a part la traité commencé entre nous de quoy je vous requiers sans plus attendre de response de ce mal

gouverné enfant vous en requerrant avec autant d'affection que je sens mon cœur oppressé d'ennuy. Pour Dieu souvenrz vous de la promesse que m'avez fâtes de me prendre en votre protection me rapportant de tout a vous & sur ce prian Dieu qu'il vous viueille preserver de touts vos ennemys & dissimulez amys, comme je le desire de me consoler & de me venger de ceulz qui pourchassent un tel malheur entre la mere & l'enfant. Je cesseray de vous troubler, mais non a m'ennuier que je ne recoive quelque consolation de vous, & de Dieu encore un coup je le supplie de vous garder de tout peril. Futhbery XII. Mars.

Votre fidelement vouée sœur

& obeissant cousine,

MARIE Q.

A la Reyne d'Angleterre, Madame ma bonne sœur & cousine.

# No. XLVI. (Vol. III. p. 16.)

#### A Testament by Q. Mary.

N. B. The following paper was transcribed by the Rev. Mr. Crawford, late Regius Professor of Church History in the University of Edinburgh. Part of this paper, according to him, is written by Naué, Mary's Secretary, the rest with the Queen's own hand. What is marked (") is in the Queen's hand.

Cott. Lib.
Vespas.
L. 16.
p. 415.
CONSIDERANT par ma condition presente
l'estat de vie humaine, si incertain, que personne
ne s'en peust, ou doibt asseurer, sinnon soubs
la grande et infinie misericorde de Dieu. Et
me voulant prevaloir d'icelle contre tous les

dangers et accidens, qui me pourroient inopinement survenir en cette captivité, mesmes a cause des grandes et longues maladies, ou j'ay eté detenué jusques a present; j'ay advisé tandis que j'ay la commodité, ou raison en jugement, de pourvoir apres ma mort la salut de mon ame, enterrement de mon corps, et disposition de mon hien, estat, & affaires, par ce present mon testament et ordonnance de mon dernier volonié, qui s'ensuyt.

Au nom du Pere, du Filz, et du benoite St. Esprit. Premierement, me recongnoissant indigne pecheresse avec plus d'offences envers mon Dieu, que de satisfaction par toutes les adversites que j'ay souffert; dont je la loue sa

bonté. Et m'appûyant sur la croix de mon Sauveur et Redempteur Josus Christ. Je recommende mon ame a la benoiste et individue Trinité, et aux prieres de la glorieuse Vierge Marie, et de tous les anges saincts & sainctes de paradis, esperant par leur merites & intercession, estre aydée a obtenir de estre faicte participante avec culx de felicité eternelle. Et pour m'y acheminer de cueur plus net et entier, despoillant des a present tout resentiment des injures, calomnies, rebellions, et aultres offenses, qui me pourroient avoir esté factes durant ma vie, par mes subjets rebelles et aultres ennemis; J'en retriet la vengeance a Dieu, & le supplie leur pardonner, de mesme affection que je luy requiers pardons a mes faultes, et a tous ceuls et celles que je puis avoir offensé de faicts ou de parolles.

Je veulx et ordonne, &c. [The two following paragraphs contain directions concerning the place and circumstance of

her burial.

Pour ne contrevenir a la gloire, honneur, et conservation de l'Eglise catholique, apostolique, et Romaine, en la quelle je veulx vivre et mourir, si le Prince d'Escosse mon filz y puest etre reduiet contre la mauvaise nourriture, qu'il a prise a mon tres grand regret en l'heresie de Calvin entre mes rebelles, je le laisse seul et unique heretier de mon royaume d'Escosse, de droiet que je pretende justement end la couronne d'Angleterre et pays qui en dependent, et generallement de tous et chacun mes meubles et immeubles qui resteront apres ma mort, et execution de ce present testament.

Si non, et que mon dit filz continue a vivre en la dite heresie. Je cede, transporte, et faicte don "de touts et chacuns mes droicts, que je pretende & puis pretendre a la conronne d'Angleterre, et aultres droicts, seigneuries, ou royaulmes en dependantz, au roy catholique, ou aultre de siens qu'il luy plaira, avesques advis, consentement de sa Sainteté; tant pour le voyr aujourdhuy le seul seurs appui de la religion catholique, que pour reconnoissance de gratuites faveurs que moy, et les miens recommandez par moy, ont avons receu de luy en ma plus grand necessité: et resguard aussi au droict que luy mesme peut pretendre a ces ditz royaulmes et pays, je le supplie qu'en recompense il preign alliance, de la maison de Lorraine, et si il ce pleut de celle de Guise, pour memoire de la race de laquelle ie suis sortie au coste de Mere, n'a ayant de celuy de mon pere que mon seul enfant, lequel estant Catholique j'av

tousjours vouè pour une des ses filles, si il luy plaisoit de l'accepter, ou faillant une de ses niepces mariée, comme sa fille.

" Je laysse mon filz a la protection du Roy, de Prince, et Ducs de Lorrayne et de Guise, et du Mayne, aux quelz je recommende et son estat en Escosse, et mon droict en Angleterre, si il est catholique, et quelle le parlie de ceste royne."

Je faitz don au "Compté de Lenox" de Compté de Lenox tenu par feu son pere, et commande mon filtz, comme mon heretier et successeur, d'obeyr en cest en droit a mon volonté.

Je veulx et ordonne toutes les sommes et deniers, qui se troveront par moys deues, tien mis cause de droict estre faits "a Lobliven" etre promptement payée et acquittés, et tout tort et griefs reparés par lesdits executeurs desquelz J'en charge la conscience. Oultre, &c. [Follow two or three paragraphs concerning particular legacies, and then is added] Faict au manoir de Sheffield en Angleterre le jour de — Mil cinq cens soixant & dix sept.

### After a large blank page follows in the Queen's hand:

"Si mon filz meurt, au Comte de Lenox, au Claude Hamilton lequel se montrera le plus fidelle vers moy, et plus constant en religion, au jugement de —— Ducs de Lorraine et de Guyse, ou je le rapport sur ce de ceulx a qui j'auray donnay la charge de trayter avesque eux de par moy et ceulx, a condition de ce marrier ou allier en la dite mayson ou par leur advis."

### Follow near two pages of particular legacies.

"Et le remets ma tante de Lenox au droict qu'elle peut pretendre a la Conté d'Angous avant l'acort fait par mon commandement entre ma dite tante de Lenox et le Comte de Morton, veu quil a esté fait & par le feu Roy mon Mary et moy, sur la promesse de sa fidelle assistance, si luy et moy encourions dangier et hesoing d'ayde, ce qu'il rompit, s'entendant secretement au les nos ennemis rebelles, qu'attemtprient contre sa vie, et pour cest effect pris les armes, et ont porté les banieres desploieës, contre nous, je revoque aussi toute aûtre don que je luy ay fait de Conté de Morton sur promesses de ses bons services a advenir, et entends que la dite Conté soit reunie a la couronne, si ell

se trouve y partenir, comme ses trahisons tant en la mort de mon feu Mary, que en mon banissement, et poursuit de la mien ne l'ont meritè. Et defends a mon filz de ce jamays servire de luy, pour de luy pour la hayne qu'il aye a ses parents, la quelle je crains ne s'estende jusques a luy, le connoisant du tout affectionné aux ennemis de mon droite en ce royaume, du quel il es penconnaire.

"Je recommende mon nepveu Francois Stuart a mon filz, et luy commande detenir pres de luy et s'enservit, et je luy laisse le bien du Conte de Boduel son oncle, en respect qu'il est de mon sang, mon filleul, et ma estè laisse

en lutelle par son pere.

"Je declare que mon frere bastard Robert Abbé de St. Croix n'a en que par circonvention Orkenay, et que le ne fut jamays mon intention, comme il apret par la revocation que j'ay fayte depuys, et eté aussi faite d'avant la asge de xxv ans, ce que j'amois deliberer si il ne m'eussent prenner par prison de se de defayte aulx estats je veulx donc que Orkenay soit reune a la couronne comme une de plus necessaires pour mon filz, & sans mayson ne pourra etre bien tenue.

"Les filles de Morra ne parvient accessi heriter, ains revient la Contè a la Couronne, si il luy plest luy donner sa ou fille en marriasge, et il nome l'en sienne ligne."

# No. XLVII. (Vol. III. p. 25.)

A Letter from Mr. Archibald Douglas to the Queen of Scotts.

PLEASE your Majesty, I received your letter April--of the date of the 12th of Novr. and in like Harl. Lib. manner has seen some part of the contents of 37. B. 9. one other of the same date, directed to Mons'. fol. 126. de Movisir, ambassador for his Majesty the most Christian King, both which are agreeable to your princely dignity. As by the one your Highness desires to know the true cause of my banishment, and offers unto me all favour if I shall be innocent of the heinous facts committed in the person of your husband of good memory, so by the other the said ambassador is willet to declare unto me, if your husband's murder could be laid justly against me, that you could not sollicit in my cause, neither yet for any person that was participant of that execrable fact, but would seek the revenge thereof, when you should have any means to do it; your Majesty's offer, if I be innocent of that crime, is

most favourable, and your desire to know the truth of the same is most equitable; and therefore that I should with all my simplicity, sincerity, and truth, answer thereunto is most reasonable, to the end that your princely dignity may be my help, if my innocence shall sufficiently appear, and procure my condemnation if I be culpable in any matter, except in the knowledge of the evil disposed minds of the most part of your nobility against your said husband, and not revealing of it; which I am assured was sufficiently known to himself, and to all that had judgment never so little in that realm; which also I was constrained to understand, as he that was specially employed betwixt the Earl Morton, and a good number of your nobility, that they might with all humility intercede at your Majesty's hand for his relief, in such matters as are more specially contained in the declaration following, which I am constrained, for my own justification, by this letter to call to your Majesty's remembrance. Notwithstanding that I am assured, to my grief, the reading thereof will not smally offend your princely mind. It may please your Majesty to remember, that in the year of God 1566, the said Earl of Morton, with divers other nobility and gent, were declared rebels to your Majesty, and banished your realm for insolent murder committed in your Majesty's own chamber, which they alledged was done by command of your husband, who notwithstanding affirmed that he was compelled by them to subscribe the warrant given for that effect; howsoever the truth of that matter remains amongst them, it appertains not to me at this time to be curious; true it is that I was one of that number, that heavily offended against your Majesty, and passed in France the time of our banishment, at the desire of the rest, to humbly pray your brother, the most Christian King, to intercede that our offences might be pardoned, and your Majesty's clemency extended towards us, albeit divers of no small reputation, in that realm, was of the opinion, that the said fact merited neither to be requisite for, nor yet pardoned. Always such was the careful mind of his Majesty towards the quietness of that realm, that the dealing in that cause was committed to Mons'. de Movisir, who was directed at that time to go into Scotland, to congratulate the happy birth of your son. whom Almighty God of his goodness may long preserve in happy estate, and perpetual felicity. The careful travail of the said de Movisir was so effectual, and your Majesty's mind so inclined to mercy, that within short space there-

after, I was permitted to repair in Scotland, to deal with Earls Mugray, Athol, Bodwel, Arguile, and Secretary Ledington, in the name and behalf of the said Earl Morton, Lords Reven, Lindsay, and remanent complesis, that they might make offer in the names of the said Earl of any matter that might satisfy your Majesty's wrath, and procure your elemency to be extended in their favours; at my coming to them, after I had opened the effect of my message, they declared that the marriage betwixt you and your husband had been the occasion already of great evil in that realm: and if your husband should be suffered to follow the appetite and mind of such as was about him, that kind of dealing might produce with time worse effects; for helping of such inconvenience that might fall out by that kind of dealing, they had thought it convenient to join themselves in league and band with some other noblemen, resolved to obey your Majesty as their natural sovereign, and have nothing to do with your husband's command whatsoever, if the said Earl would for himself enter into that band and confederacy with them, they could be content to humbly request and travel by all means with your Majesty for his pardon, but before they could any farther proceed, they desired to know the said Earl's mind herein: when I had answered, that he nor his friends, at my departure, could not know that any such like matter would be proponit, and therefore was not instructed what to answer therein, they desired that I should return sufficiently instructed in this matter to Sterling, before the baptism of your son, whom God might preserve; this message was faithfully delivered to me at Newcastle in England, where the said Earl then remained, in presence of his friends and company, where they all condescended to have no farther dealing with your husband, and to enter into the said band. With this deliberation I returned to Sterling, where, at the request of the most Christian King and the Queen's Majesty of England, by their ambassadors present, your Majesty's gracious pardon was granted unto them all, under condition always that they should remain banished forth of the realm, the space of two years, and farther during your Majesty's pleasure, which limitation was after mitigated at the humble request of your own nobility, so that immediately after the said Earl of Morton repaired into Scotland to Qubittingaime, where the Earl of Bodvell and Secretary Ledington come to him; what speech passed there amongst them, as God shall be my

judge. I knew nothing at that time, but at their departure I was requested by the said Earl Morton to accompany the Earl Bodyell and Secretary to Edenburgh, and to return with such answer as they should obtain of your Majesty. which being given to me by the said persons, as God shall be my judge, was no other than these words. "Schaw to the Earl Morton that the Queen will hear no speech of that matter appointed unto him:" when I craft that the answer might be made more sensible. Secretary Ledington said, that the Earl would sufficiently understand it, albeit few or none at that time understand what passed amongst them. It is known to all men, als veill be railling letters passed betwint the said Earl and Ledingfon when they become in divers factions, as also ane buck sett furth by the ministers, wherein they affirm that the Earl of Morton has confessed to them, before his death, that the Earl Bodvell come to Quittingaime to prepone the calling away off the King your husband, to the which proposition the said Earl of Morton affirms that he could give no answer unto such time he might know your Majesty's mind therein, which he never received. As to the abominable murder, it is known too by the depositions of many persons that were executed to the death for the committing thereof, that the same was executed by them, and at the command of such of the nobility as had subscrivit band for that effect. By this unpleasant declaration, the most part thereof known to yourself, and the remainder may be understood by the aforesaid witnesses that was examined in torture, and that are extant in the custody of the ordinary judges in Scotland, my innocency, so far as may concern any fact, does appear sufficiently to your Majesty. And as for my dealing aforesaid, I can be no otherwise charged therein, but as what would accuse the vessel that preserves the vine from harm, for the intemperancy of such as immoderately use the same. As for the special cause of my banishment, I think the same has proceeded upon ane opinion conceived, that I was able to accuse the Earl of Morton of so much matter as they alledge himself to have confessed before he died, and would not be induced, for loss of reputation, to perform any part thereof. If this be the occasion of my trouble, as I suppose it is, what punishment I should deserve I remit me to your Majesty's better judgment, who well knows how careful ever ilk gentleman should be of his fame, reputation and honour, and how far ever ilk man should abhor the name of a pultroun, and how indecent it

would have been to me to accuse the Earl of Morton, being so near of his kin, notwithstanding all the injuries I was constrained to receive at his hand all the time of his government, and for no other cause, but for shewing of particular friendship to particular friends in the time of the last cruel troubles in Scotland. Sorry I be now to accuse him in any matter being dead, and more sorry that being on lyff, be such kind of dealing obtained that name of Ingrate. Always for my own part I have been banished my native country those three years and four months, living in anxiety of mind, my holl guds in Scotland, which were not small, intermittit and disponit upon, and has continually since the time I was relieved out of my last troubles at the desire of Mons<sup>r</sup>, de Movisir, attended to know your Majesty's pleasure, and to wait upon what service it should please your Majesty for to command. Upon the 8th of April inst. your good friend Secretary Walsinghame has declared unto me, that her Highness tho't it expedient that I should retire myself where I pleased, I declared unto him I had no means whereby I might perform that desire, until such time as I should receive it from your Majesty. Neither knew I where it would please your Highness to direct me, until such time as I should have received further information from you. Upon this occasion, and partly by permission. I have taken the hardress to write this present letter, whereby your Majesty may understand any part of my troubles past, and straight present. As to my intention future, I will never deny that I am fully resolved to spend the rest of my days in your Majesty's service, and the King your son's, wheresoever I shall be directed by your Majesty, and for the better performing thereof, if so shall be her Majesty's pleasure, to recommend the tryal of my innocency, and examination of the verity of the preceding narration, to the King your son, with request that I may be pardoned for such offences as concerned your Majesty's service, and var common to all men the time of his les aige and perdonit to all, except to me, I should be the bearer thereof myself, and be directed in whatsoever service it should please your Majesty for to command. Most humbly I beseech your Majesty to consider hereof, and to be so gracious as to give order, that I may have means to serve your Majesty according to the sincerity of my meaning, and so expecting your Majesty's answer, after the kissing your hand with all humility, I take leave from London.

No. XLVIII. (Vol. III. p. 31.),

A Letter from Sir Amias Pawlet. SIR,

I DID forbear, according to your direction Origin. signified in your letters of the fourth of this pre-Cal. C. 9. sent, to proceed to the execution of the contents of Mr. Waade's letters unto you, for the dispersing of this lady's unnecessary servants, and for the ceasing of her money, wherein I was bold to write unto you my simple opinion (although in vain as it now falleth out), by my letters of the 7th of this instant, which, I doubt not, are with you before this time: but upon the receipt of your letters of the 5th, which came not into my hands until the 8th in the evening, by reason, as it did appear by indorsement, that they had been mistaken, and were sent back to Windsor, after they were entered into the way towards me. I considered, that being accompanied only with my own servants, it might be thought that they would be intreated to say as I would command them; and therefore I thought good, for my better discharge in these money matters, to crave the assistance of Mr. Richard Bagott, who repairing unto me the next morning, we had access to this Queen, whom we found in her bed, troubled after the old manner with a defluxion, which was fallen down into the side of her neck, and had bereft her of the use of one of her hands. unto whom I declared, that upon occasion of her former practices, doubting lest she would persist therein by corrupting underhand some bad members of this state. I was expressly commanded to take her money into my hands. and to rest answerable for it, when it shall be required; advising her to deliver the said money unto me with quietness. After many denials, many exclamations, and many bitter words against you (I say nothing of her railing against myself), with flat affirmation that her Majesty might have her body, but her heart she should never have, refusing to deliver the key of the cabinet, I called my servants, and sent for barrs to break open the door, whereupon she yielded, and causing the door to be opened, I found there in the coffers, mentioned in Mr. Waade's remembrance. five rolls of canvass, containing five thousand French crowns, and two leather bags, whereof the one had, in gold, one hundred and four pounds two shillings, and the other had three pounds in silver, which bag of silver was

left with her, affirming that she had no more money in this house, and that she was indebted to her servants for their wages. Mr. Waade's note maketh mention of three rolls

Curle can tell you the truth of this matter.

left in Curle's chamber, wherein, no doubt, he was misreckoned, which is evident as well by the testimonies and oaths of diverse persons, as also by probable conjectures; so as in truth we found only two rolls, every of which containeth one thousand crowns, which was this Queen's

guifte to Curle's wife at her marriage. There is found in Naw's chamber, in a cabinet, a chain worth by estimation one hundred pounds, and in money, in one bag nine hundred pounds, in a second bag two hundred fourscore and six pounds eighteen shillings. All the foresaid parcels of money are bestowed in bags, and scaled by Mr. Richard Bagot, saving five hundred pounds of Naw's money, which I reserve in my hands for the use of this household, and may be repayed at London, where her Majesty shall appoint, out of the money received lately by one of my servants, out of the exchequer. I feared lest the people might have dispersed this money in all this time, or have hidden the same in some secret corners; for doubt whereof I had caused all this Queen's family, from the highest to the lowest, to be guarded in the several places where I found them, so as yff I had not found the money with quietness. I had been forced to have searched first all their lodgings, and then their own persons. I thank God with all my heart, as for a singular blessing, that that falleth out so well, fearing lest a contrary success might have moved some hard conceits in her Maiestv.

Touching the dispersion of this Queen's servants, I trust I have done so much as may suffice to satisfy her Majesty for the time, wherein I could not take any absolute course, until I heard again from you, partly because her Majesty, by Mr. Waade's letter, doth refer to your consideration to return such as shall be discharged to their several dwellings and countries, wherein, as it seemeth, you have forgotten to deliver your opinion; partly, for that as yet I have received no answer from you of your resolution, upon the view of the Scottish family sent unto you, what persons you will appoint to be dismist; only this I have done, I have bestowed all such as are mentioned in this bill, inclosed in three or four several rooms, as the same may suffice to contain them, and that their meat and drink shall be brought unto them by my servants. It may please you, to advertise

me by your next letters, in what sort, and for what course. I

This lady hath good store of money at present in the French ambassador's hands.

shall make their passports, as also, if they shall say that they are unpaid of their wages, what I shall do therein. Yt is said that they have been accustomed to be paid of their wages at Christmas, for the whole year. Her Majesty's charge will be somewhat diminished by the departure of this people, and my charge by this occasion will be the more easy. But the persons, all save Bastian, are such silly and simple souls, as there was no great cause to fear their practices,

and upon this ground, I was of opinion, in my former letters, that all this dismissed train should have followed their mistress until the next remove, and there to have been discharged upon the sudden, for doubt that the said remove might be delayed, if she did fear, or expect any hard measure.

Others shall excuse their foolish pity as they may; but, for my part, I renounce my part of the joys of heaven, yf in any thing that I have said, written, or done, I have had any other respect than the furtherance of her Majesty's service; and so I shall most earnestly pray you to affirm for me, as likewise for the not seasing of the money by Mr. Manners. the other commissioners, and myself. I trust Mr. Waade hath answered, in all humble duties, for the whole company, that no one of us did so much as think that our commission reaching only to the papers, we might be bold to touch the money, so as there was no speech of that all to my knowledge, and as you know I was no commissioner in this search, but had my hands full at Tyxall, discreet servants are not hastily to deal in great matters without warrant, and especially where the cause is such as the delay of it carrieth no danger.

Your advertisement of that happy remove hath been greatly comfortable unto me. I will not say, in respect of myself, because my private interest hath no measure of comparison with her Majesty's safety, and with the quiet of this realm. God grant a happy and speedy yssue to these good and godly counsels; and so I commit you to his merciful protection. From Chartley, the 10th of September,

1586.

#### No. XLIX. (Vol. III. p. 42.)

Letter from the King of Scots to Mr. Archibald Douglas, his ambassador in England, October, 1586.

Cott. Lib. Calig. C. 9. An original in the King's hand. RESERVE up yourself na langer in the earnest dealing for my mother, for ye have done it too long; and think not that any your travellis can do goode if hir lyfe be takin, for then adeu with dealing with thaime that are the special instrumentis thairof; and, theirfore, gif ye looke for the contineuance of my favour towartis you,

spair na pains nor plainnes in this cace, but reade my letter wrettin to Williame Keith, and conform yourself quhollie to the contentis thairof, and in this requiest let me reap the fruictis of youre great credit there, ather now or never. Fairwell. October, 1586.

Letter to Sir William Keith, ambassador in England, probably from Secretary Maitland. Nov. 27, 1586.

A copy in the Collect. of Sir A. Dick. Vol. A. fol. 219. By your letters sent by this bearer (albeit concerning no pleasant subject), his Majesty conceives well of your earnestness and fidelity in your negotiations, as also of Mr. Archibald's activity and diligence, whom you so greatly praise and recommend, I wish the issue correspond to his Majesty's opinion, your care and tra-

vell, and his great diligence as you write. His Majesty takes this rigorous proceeding against his mother deeply in heart, as a matter greatly concerning him both in honour and otherwise. His Highnesses actions and behaviour utter plainly not only how far nature prevails, but also how he apprehends of the sequel of that process, and of what moment he esteems it. There is an ambassade shortly to be directed, wherein will be employed an Earl and two counsellors, on whose answer will depend the continuance or dissolution of the amity and good intelligence between the Princes of this isle. In the mean season, if farther extremity be used, and his Majesty's suit and request disdained, his Highness will think himself dishonoured and contemned far besides his expectations and deserts. Ye may perceive his Majesty's disposition by his letter to you, which you shall impart to Mr. Archibald, and both deal according thereto. I need not to recommend to you care, concerning your master's service both in weill and in honour. As you and your colleague shall behave yourself in this behalf, so for my own part will I interpret your affection to your master. I am glad of that I hear of yourself, and I do fully credit that you write of Mr. Archibald, whose friends here make great account of his professed devotion to the Queen, besides the duty he owes to the King's Majesty, her son. Farther I am constrained to remit to next occasion, having scarce time to scribble these few lines (which of themselves may bear witness of my haste). Wishing you a prosperous issue of your negociation, I commit you, &c. Halyrudhouse, Nov. 27th, 1586.

The people, and all estates here are so far moved by the rigorous proceedings against the Queen, that his Majesty, and all that have credit are importuned, and may not go abroad for exclamations against them, and imprecations

against the Queen of England.

#### No. L. (Vol. III. p. 45.)

To the King's Majesty, from Mr. Archibald Douglas.

16 Oct. 1596. From the original in the Collect. of Sir A. Dick. Vol. B. fol. 324. PLEASE your Majesty, I received your letter of the date the 28th of September, the 5th of October, which was the same day that I directed W<sup>m</sup>. Murray towards your Highness. By such letters as he carried, and others of several dates, your Majesty may perceive that I had omitted nothing so far as my travel might reach unto, anent the performing of the two chief points contained in the said letter before the receipt thereof, which by these presents I must

repeat for answering of the saidis. As to the first, so far as may concern the interceding for the Queen your Majesty's mother her life, I have divers times, and in every audience, travelled with this Queen in that matter, specially to know what her full determination must be in that point, and could never bring her to any further answer, but that this proceeding against her by order of justice was no less against her mind, than against their will that loved her best; as towards her life she could give no answers thereunto, untill such time as the law hath declared whether she was innocent or guilty. Herewithal it was her pleasure thus far to inform me, that it was a number of the associants that ear-

nestly pressed her that the law might proceed against her, giving reasons that so long as she was suffered to deal in matters, so long would never this realm be in quiet, neither her life, neither this state in assurance; and in the end they used this protestation, that if she would not in this matter follow their advice, that they should remain without all blame, whatsoever, should fall out; whereupour she had granted them liberty to proceed, lest such as had made the request might hereafter have charged herself with inconvenience if any should happen.

And by myself I know this her speech to be true, because both Papist and Protestant has behaved them, as it hath been her pleasure to declare, but upon divers respects, the one to avoid suspicion that otherwise was conceived against them, the other upon zeal, and care that they will be known to have for preservation of their sovereign's life and state in this perilous time; upon consideration whereof, I have been constrained to enter into some dealing with both, wherewith I made her Majesty acquainted; the Protestants, and such as in other matters will be known to bear no small favour unto your Majesty's service, hath prayed that they may be excused from any dealing in the contrary of that, which by Their oath they have avowed, and by their speech to their sovereign requested for, and that before my coming in this country; if they should now otherwise do, it would produce no better effect but to make them subject to the accusation of their sovereign, when it should please her to do it, of their inconstancy, in giving councell whereby they might incur the danger of ill councellors, and be consequent worthy of punishment. Such of the Papists as I did deal with, went immediately and told her Majesty what I had spoken to them, who albeit she understood the matter of before, sent for me, and declared to me my own speech that I had uttered to them, willing me for the weill of my maister's service to abstain from dealing with such as were not yet sufficiently moved to think of my master as she did. I craved leave of her Majesty, that I might inform them of your Majesty's late behaviour towards her, and the state of this realm, whereunto with some difficulty she gave her consent. At my late departure from court, which was upon the 5th of this instant, and the day after that the lords of this grand jury had taken their leaves of her Majesty to go northward to Fotheringham, it was her pleasure to promise to have further speech in this matter at the returning of the said lords, and to give full answer according to your Ma-

jesty's contentment to the remainder matters, that I had proponit in name of your Majesty. As to the 2d part concerning the association, and desire that the promise made to the Master of Gray concerning your Majesty's title may be fulfilled, it appears by the said letter, that the very point whereupon the question that may bring your Majesty's title in doubt, hath not been rightly at the writing of the said letter considered, which I take to have proceeded for lack of reading of the act of parliament, wherein is fulfilled all the promise made by the Queen to the said Master, and nothing may now cause any doubt to arise against your said title, except that an opinion should be conceived by these lords of this Parliament that are so vehement at this time against the Queen your Majesty's mother, that your Majesty is, or may be proved hereafter assenting to her proceedings, and some that love your Majesty's service were of that opinion, that too earnest request might move a ground whereupon suspicions might grow in men so ill affected in that matter, which I tho't might be helped by obtaining of a declaration in parliament of your Majesty's innocence at this time, and by reason that good nature and public honesty would constrain you to intercede for the Queen your mother, which would carry with itself, without any further, some suspicion that might move ill affected men to doubt. In my former letters I humbly craved of your Majesty that some learned men in the laws might be moved to advise with the words of the association, and the mitigation contained in the act of parliament, and withall to advise what suspicious effects your Majesty's request might work in these choleric men at this time, and how their minds might be best moved to receive reason; and upon all these considerations they might have formed the words of a declarator of your Majesty's innocence to be obtained in this parliament, and failing thereof, the very words of a protestation for the same effect that might best serve for your Majesty's service, and for my better infor a-Albeit this was my simple opinion. I shall be contented to follow any direction it shall please your Majesty to give. I have already opened the substance hereof to the Queen of this realm, who seems not to be offended herewith. and hath granted liberty to deal therein with such of the parliament as may remain in any doubt of mind. This being the sum of my proceedings in this matter, besides the remainder, contained in other letters of several dates, I am constrained to lay the whole open before your Majesty,

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and to humbly pray that full information may be sent unto me what further to do herein; in this middle time, while I receive more ample direction, I shall proceed and be doing according to such direction as I have already received. And so, most gracious sovereign, wishing unto your Majesty all happy success in your affairs, I humbly take my leave from London, the 16th of October, 1586. Your Majesty's most humble subject and obedt. servant.

### A Memorial for his Majesty by the Muster of Gray.

It will please your Majesty I have tho't meete 12th Jan. to set down all things as they occur, and all 1586. An advertisements as they come to my ears, then

original in iointly in a lettre. his own

I came to Vare the 24th of Decr. and sent to hand in the Wm. Keith and Mr. Archibald Douglas to ad-Collect. of vertise the Queen of it, like as they did at their Sir A.Dick. audience. She promised the Queen your Ma-Vol. A. fol. jesty's mother's life should be spared till we

were heard. The 27th they came to Vare to me, the which day Sir Robt. came to Vare, where they shewed us how far they had already gone in their negociation, but for that the discourse of it is set down in our general letter. I remit me to it, only this far I will testify unto your Majesty, that Wm. Keith hath used himself right honestly and wisely till our coming, respecting all circumstances, and chiefly his colleague his dealing, which indeed is not better than your Majesty knows already.

The 29th day of Decr. we came to London, where we were no ways friendly received, nor after the honest sort it had pleased your Majesty to use her ambassadors; never man sent to welcome or convey us. The same day we understood of Mr. de Bellievre his Lave taking; and for that the custom permitted not, we sent our excuses by Mr.

George Young.

The 1st day of Janry. Wm. Keith and his colleague, according to the custom, sent to crave our audience. We received the answer contained in the general letter, and could not have answer until the 6th day; what was done that day your Majesty has it in the general, yet we was not out of esperance at that time, albeit we received hard answers.

The 8th day we speak with the Earl of Leicester, where

our conference was, as is set down in the general. I remarked this, that he that day said plainly the detaining of the Queen of Scotland prisoner was for that she pretended a succession to this crown. Judge then by this what is tho't of your Majesty, as ye shall hear a little after.

The 9th day we speak with the Frenc's ambassador, whom we find very plain in making to us a wise discourse of all his proceedings, and Mr. de Bellievre we thanked him in your Majesty's name, and opened such things as we had to treat with this Queen, save the last point as more largely

set down by our general.

It is tho't here, and some friends of your Majesty's advised me, that Bellievre his negotiation was not effectual, and that the resident was not privy to it, as indeed I think is true; for since Bellievre his perting, there is a talk of this Chasteauneuf his servants taken with his whole, papers and pacquets, which he was sending in France, for that they charge him with a conspiracy of late against the Queen here It is alledged his servant has confessed the matter, but whom I shall trust I know not, but till I see proof I shall account him an honest man, for indeed so he appears, and one (without doubt) who hath been very instant in this matter. I shew him that the Queen and Earl of Leicester had desired to speak with me in private, and craved his opinion; he gave it freely that he tho't it meetest I shew him the reason why I communicate that to him, for that I had been suspected by some of her Majesty's friends in France to have done evil offices in her service, that he should be my witness that my carnest dealing in this should be a sufficient testimony that all was lies, and that this Naué who now had betrayed her, had in that done evil offices: he desired me, seeing she saw only with other folks eyes, that I should no ways impute it to her, for the like she had done to herself by Naué his persuasion. I answered, he should be my witness in that.

The 9th day we sent to court to crave audience, which we got the 10th day; at the first, she said a thing long looked for should be welcome when it comes, I would now see your master's offers. I answered, no man makes offers but for some cause; we would, and like your Majesty, first know the cause to be extant for which we offer, and likewise that it be extant till your Majesty has heard us. I think it to be extant yet, but I will not promise for an hour; but you think to shift in that sort. I answered, we mind

not to shift, but to offer from our sovereign all things that with reasor may be; and in special, we offered as is set down in our general: all was refused and tho't nothing. She called on the three that were in the house, the Earl of Leicester, my Lord Admiral, and Chamberlain, and very despitefully repeated all our offers in presence of them all. I opened the last part, and said, Madam, for what respect is it that men deal against your person or estate for her cause? She answered, because they think she shall succeed to me, and for that she is a Papist: appearingly said I, both the causes may be removed: she said she would be glad to understand it. If. Madam, said I, all that she has of right of succession were in the King our sovereign's person, were not all hope of Papists removed? She answered, I Then, Madam, I think the Queen his mother shall willingly demit all her rights in his person. She answered, she hath no right, for she is declared unhabil. Then I said, if she have no right, appearingly the hope ceases already, so that it is not to be feared that any man attempt for her. The Queen answered, but the Papists allow not our declaration: then let it fall, says I, in the King's person by her assignation. The Earl of Leicester answered, she is a prisoner, how can she demit? I answered, the demission is to her son, by the advice of all the friends she has in Europe, and in case, as God forbid, that any attempt cuttis the Queen here away, who shall party with her to prove the demission or assignation to be ineffectual, her son being opposite party, and having all the Princes her friends for him, having bonded for the efficacy of it with his Majesty of before. The Queen made as she could not comprehend my meaning, and Sir Robt opened the matter again, she yet made as tho' she understood not. So the Earl of Leicester answered, that our meaning was, that the King should be put in his mother's place. Is it so, the Queen answered, then I put myself in a worse case than of before; by God's passion, that were to cut my own throat; and for a dutchy or an earldom to yourself, you or such of you would cause some of your desperate knaves kill me. No, by God, he shall never be in that place. I answered, he craves nothing of your Majesty but only of his mother. The Earl of Leicester answered, that were to make him party to the Queen my mistress. I said, he will be far more party, if he be in her place through her death. She would stay no longer. but said she would not have a worse in his mother's place: and said, tell your King what good I have done for him in

holding the crown on his head since he was born, and that I mind to keep the league that now stands between us, and if he break it shall be a double fault, and with this minded to have bidden us a farewell: but we achevit [i. e. finished arguing upon this point]. And I spake craving of her that her life may be spared for 15 days; she refused. Sir Robt. craved for only eight days; she said, not for an hour; and so geid her away. Your Majesty sees we have delivered all we had for offers, but all is for nothing, for she and her councel has laid a determination that they mind to follow forth, and I see it comes rather of her councel than herself, which I like the worse; for without doubt, Sir, it shall cut off all friendship ve had here. Altho' it were that once they had meaned well to your Majesty, yet remembring themselves, that they have medled with your mother's blood, good faith they cannot hope great good of yourself, a thing in truth I am sorry for; further, your Majesty may perceive by this last discourse of that I proponit, if they had meaned well to your Majesty, they had used it otherwise than they have done, for reason has bound them. But I dare not write all. I mind something to speak in this matter, because we look shurly our letters will be trussit by the way.

For that I see private credit nor no means can alter their determination, altho' the Queen again and the Earl of Leicester has desired to speak with me in particular: I mind not to speak, nor shall not; but assuredly shall let all men see that I in particular was no ways tyed to England, but for the respect of your Majesty's scrvice. So albeit, at this time I could not effectuate that I desired, yet my upright dealing in it shall be manifested to the world. We are, God willing, then to crave audience, where we mind to use sharply our instructions, which hitherto we have used very calmly; for we can, for your honour's cause, say no less for your Majesty than the French ambassador has said for his

master.

. So I pray your Majesty consider my upright dealing in your service, and not the effect; for had it been doable [i. e. possible to be done] by any I might have here had credit; but being I came only for that cause, I will not my credit shall serve here to any further purpose. I pray God preserve your Majesty, and send you a true and sincere friendship. From London this 12th of Jan. 1586.

I understand the Queen is to send one of her own to your

Majesty.

To the Right Hon. my Lord Vice-chancellor and Secretary to his Majesty, from the Master of Gray.

12th Jan. 1586. An original in the Collect. of Sir A. Dick. Vol. A. fol. 179. My Lord, I send you these lines with this inclosed to his Majesty, whereby your Lordship shall understand how matters goes here. And before all things I pray your Lordship move his Majesty to respect my diligence, and not the effect in this negotiation, for I swear if it had been for the crown of England to myself I could do no more, and let not unfriends have advan-

tage of me, for the world shall see that I loved England for his Majesty's service only. I look shortly to find your Lordship friend as ye made promise, and by God I shall be to you if I can. Wm. Keith and I devyset, if matters had gone well, to have run a course that your Lordship might have here been in credit and others disappointed. but now I will do for you as for myself: which is to care for no credit here, for in conscience they mean not honestly to the King our sovereign, and if they may, he will go the get his mother is gone, or shortly to go, therefore, my Lord, without all kind of scruple, I pray you to advise him the best is not this way. They say here, that it has been said by one who heard it from you, that ye desired not the King and England to agree, because it would rack the noblemen. and gave an example of it by King James the Fourt: I answered in your name, that I was assured you never had spoken it. Mr. Archibald is the speaker of it, who I assure your Lordship has been a poison in this matter, for they lean very mickle to his opinion. He cares not, he says, for at length the King will be faint to deal this way, either by fair means or necessity, so that when he deals this course he is assured to be welcome; to set down all that is past of the like purposes, it would consume more paper than I have here, so I defer it to meeting. There is a new conspiracy alledged against the Queen to have been intended, for the French ambassador resident three of his men taken, but I think in the end it shall prove nothing. Mr. Stafford. who is ambassador for this Queen in France, is touched with it, his brother is taken here, always it has done this harm in our negotiation, that all this council would not move this Queen to medle with the Queen of Scotland's blood, till this invention was found forth. I remit all other things to the inclosed. We minded to have sent to his

Majesty a discourse, which we have set down of all our proceedings since our hither coming, but we are surely advertized that the bearer is to be trussed by the way for our pacquets, so that we defer it till our own coming; this I have put in a privy part beside the pacquet. We shall, I think, take leave on Fryday the 13th day, where we mind exactly to follow the rigour of our instructions, for it cannot stand with the King's honour that we say less than the French ambassador, which was, Le roy mon maistre ne peult moins faire que se resentir. So that about the 24th I think we shall, God willing, be at home, except that some stay come which we look not for. The Queen and the Earl of Leicester has desired to speak with me. I refused save in presence of my colleagues, by reason I see a determination which particular credit cannot help, and I crave no credit but for that cause. It will please your Lordship retire the inclosed from his Majesty and keep it. So after my service commended to yourself and bedfellow, I commit you to God. From London the 12th of Jan. 1586.

## To the King's Majesty, from Sir Robert Melvil.

20th Jan. 1586. An original in his own hand, in the Collect. of Sir A. Dick. Vol. A. fol. 181. It may please your Majesty, since the direction of our former letters, we had audience, and her Majesty appeared to take our overtures in good part in presence of her council; albeit no offers could take place with them, having taken resolution to proceed with extremity, not the less it pleased her Majesty to desire us to stay for two days on taking our leave, until she had advised upon our propositions; since which

time her Majesty is become more hard by some letters (as we are informed) has come from Scotland, making some hope to believe that your Majesty takes not this matter to heart, as we know the contrary in effect, and had of before removed the like opinion out of her Majesty's mind, which by sinister information was credited, their reports has hindered our commission, and abused this Queen, fearing in like manner we shall be stayed until answer come from Scotland by such person as they have intelligence of. And albeit that it will be well enough known to all men how heavily your Majesty takes this proceeding to heart; the truth is, that they have by this occasion so persuaded the Queen, that it is like to hinder our negotiation. As also Alchinder (i. e. Alexander) Steward is to be directed in their party, by

our knowledge, who has awantyt more of his credit, than I believe he may perform, and we willed him to desist from this dealing, saying it does harm, and he is not meet for that purpose, remitting to your Majesty's good discretion to take order herein as we shall be answerable to your Majesty not to omit any point we have in charge, as the truth is, the Master of Grhaye has behaved himself very uprightly and discreetly in this charge, and evil tayne with be divers in these parts who were of before his friends. We have been behalden to the menstrals who has born us best company. but has not been troubled with others. Wylzeme Kethe hath left nothing undone that he had in charge. As for Master Archibald he has promised at all times to do his dewoyr, wherein he shall find true report made to your Majesty, craving pardon of your Majesty that I have been so tedious, after I have kissed your Majesty's hand I humbly take my leave. Praying God to grant your Majesty many good days and happy, in whose protection I commit your Majesty. At London the 20th of Jan. 1586.

SIR.

ALBEIT Master George has not been in commission, he is not inferior in his service to any of us, as well by his good advice and diligent care he takes for the advancement of your service, wherein we have not been a little furthered.

### To the King's Majesty, from the Master of Gray and Sir Robert Melvil.

21st Jan.
1586. An original in the Collect.
Of Sir A.
Dick. Vol.
A. fol. 180.

PLEASE it your Majesty in the last audience we had, since our last advertisement by W<sup>m</sup>.
Murray, we find her Majesty at the resuming our offers something mitigated, and inclined to consider more deeply of them, before we got our leave. At our reasoning, certain of the council, namely, my Lord of Leicester, Sir Christopher

Haton, my Lord Hunsdon, and my Lord Hawart being present in the chamber, gave little shew of any great contentment to have her from her former resolution, now cassin in perplexitie what she should do always we left her in that state, and since have daily pressed conference with the whole council, which to this hour we have not yet obtained. This day we have sent down to crave our leave. The greatest hinder which our negotiation has found hither to is a persuasion they have here, that either your Majesty

deals superficially in this matter, or that with time ve may be moved to digest it, which when with great difficulty we had expugnit, we find anew that certain letters written to them of late from Scotland has found some place of credit with them in our contrare. So that resolving now to clear them of that doubt by a special message, they have made choice of Sir Alexander Stewart to try your Highness's meaning in it, and to persuade your Majesty to like of their proceedings. wherefrom no terror we can say out unto him is able to divert him; he has given out that he has credit with your Majesty, and that he doubts not to help this matter at your Highness's hand. If he come there that errand, we think your Majesty will not oversee the great disgrace that his attempts shall give us here, if he be not tane order with before that he be further heard; and if so be that any other be directed (as our intelligence gives us there shall) our humble suit is to her Majesty, that it may please your Highness to hear of us what we find here, and at what point we leave this matter with her Majesty, before that they find accidence, the causes whereof, remitting to our private letters. We commit your Majesty for the present to God's eternal protection. From London this 21st of Jan. 1586.

## No. LI. (Vol. III. p. 51.)

Copy of a letter from the Earls of Shrewsbury and Kent. &c. touching their proceedings with regard to the death of the Scottish Queen, to her Majesty's council.

It may please your Honble, good Lordships to be advertised, that, on Saturday, the 4th of this present, I Robert Beale came to the house of me the Earl of Kent, in the county of -, to whom your Lordships' letter and message was delivered, and her Majesty's commission shewn; whereupon I the Earl forthwith sent precepts for the staying of such hues and cries as had troubled the country, requiring the officers to make stay of all such persons as should bring any such warrants without names, as before had been done, and to bring them to the next justice of peace, to the intent that upon their examination, the occasion and causes of such seditious bruites might be bolted out and known. It was also resolved that I the said Earl of Kent should, on the Monday following, come to Lylford to Mr. Elmes, to be the nearer and readier to confer with my Lord of Shrewsbury. Sonday at night, I Robert Beale

came to Fotheringay, where, after the communicating the commission. &c. unto us Sir Amice Pawlet and Sir Drue Drury, by reason that Sir A. Pawlet was but late recovered and not able to repair to the Earl of Shrewsbury, being then at Orton, six miles off; it was thought good that we Sir Drue Drury and Robert Beale should go unto him. which we did on --- morning; and together with the delivery of her Majesty's commission, and your Lordships' letter, imparted unto him what both the Earl of Kent and we thought meet to be done in the cause, praying his Lordship hither the day following, to confer with me the said Earl, concerning the same; which his Lordship promised. And for the better colouring of the matter, I the said Earl of Shrewsbury sent to Mr. Beale, a justice of peace of the county of Huntingdon next adjoining, to whom I communicated that warrant, which Robert Beale had under your Lordships' hands for the staying of the hues and cries, requiring him to give notice thereof to the town of Peterborough, and especially unto the justices of peace of Huntingdonshire, and to cause the pursuers and bringers of such warrants to be stayed, and brought to the next justice of peace; and to bring us word to Fotheringay Castle on Wednesday morning what he had done, and what he should in the mean time understand of the authors of such bruites. Which like order, I also Sir Amias Pawlet had taken on Monday morning in this town, and other places adjoining. The same night the sheriff of the county of Northampton, upon the receipt of your Lordships' letter, came to Arundel, and letters were sent to me the Earl of Kent of the Earl of Shrewsbury's intention and meeting here on Tuesday by noon; and other letters were also sent with their Lordships' assent to Sir Edward Montagu, Sir Richard Knightly, Mr. Tho. Brundenell, &c. to be here on Wednesday by eight of the clock in the morning, at which time it was thought meet that the execution should be. So upon Tuesday, we the Earls came hither, where the sheriff met us; and upon conference between us it was resolved, that the care for the sending for the surgeons, and other necessary provision should be committed unto him against the time. And we forthwith repaired unto her, and first in the presence of herself and her folks, to the intent that they might see and report hereafter that she was not otherwise proceeded with than according to law. and the form of the statute made in the 27th year of her Majesty's reign, it was thought convenient that her Majesty's commission should be read unto her, and afterwards she was by sundry speeches willed to prepare herself against the next morning. She was also put in remembrance of her fault, the honourable manner of proceeding with her, and the necessity that was imposed upon her Majesty to proceed to execution, for that otherwise it was found that they could not both stand together; and however, sithence the Lord Buckhurst his being here new conspiracies were attempted, and so would be still; wherefore since she had now a good while since warning, by the said Lord and Robert Beale, to think upon and prepare herself to die, we doubted not but that she was, before this, settled, and therefore would accept this message in good part. And to the effect that no Christian duty might be said to be omitted, that might be for her comfort, and tend to the salvation both of her body and soul in the world to come, we offered unto her that if it would please her to confer with the Bishop and Dean of Peterborough, she might; which Dean, we had, for that purpose, appointed to be lodged within one mile of that place. Hereto she replied, crossing herself in the name of the Father, the Son. and the Holy Ghost, saying that she was ready to die in the Catholic Roman faith, which her ancestors had professed, from which she would not be removed. And albeit we used many persuasions to the contrary, yet we prevailed nothing; and therefore, when she demanded the admittance of her priest, we utterly denied that unto her. Hereupon, she demanded to understand what answer we had touching her former petition to her Majesty, concerning her papers of accounts, and the bestowing of her body. To the first we had none other answer to make, but that we thought if they were not sent before, the same might be in Mr. Waade's custody, who was now in France, and seeing her papers could not any wise pleasure her Majesty. we doubted not but that the same would be delivered unto such as she should appoint. For, for our own parts, we undoubtedly thought that her Majesty would not make any profit of her things, and therefore (in our opinions) she might set down what she would have done, and the same should be imparted unto her Majesty, of whom both she and others might expect all courtesy. Touching her body, we know not her Majesty's pleasure, and therefore could neither say that her petition should be denied, or granted. For the practice of Babington, she utterly denied it, and would have inferred it that her death was for her religion. whereunto it was eftsoons by us replied, that for many years she was not touched for her religion, nor should have been now, but that this proceeding against her was for treason, in that she was culpable of that horrible conspiracy for destroying her Majesty's person; which she again denied, adding further, that albeit she for herself forgave them that were the procurers of her death, yet she doubted not but that God would take vengeance thereof. And being charged with the depositions of Naué and Curle to prove it against her, she replied, that she accused none, but that hereafter when she shall be dead and they remain alive. it shall be seen how indifferently she had been dealt with. and what measure had been used unto her; and asked whether it had been heard before this, that servants had been practised to accuse their mistress? and hereupon also required what was become of them, and where they remained.

Upon our departure from her, for that it seemed by the commission that the charge of her was in the disposition of us the Earls, we required S. Amias Pawlet and S. Drue Drurie, to receive for that night the charge which they had before, and to cause the whole number of soldiers to watch that night, and that her folks should be put up, and take order that only four of them should be at the execution, remaining aloof off and guarded with certain persons so as they should not come near unto her, which were Melvil her steward, the physician, surgeon, and apothecary.

Wednesday morning, after that we the Earls were repaired unto the castle, and the sheriff had prepared all things in the hall for the execution, he was commanded to go into her chamber, and to bring her down to the place where were present, we which have signed this letter, Mr. Henry Talbot, Esq., Sir Edward Montague, Knt., his son and heir-apparent, and William Montague his brother, Sir Richard Knichtly, Knt., Mr. Thomas Brudenell, Mr. Beuill, Mr. Robert and John Wingefield, Mr. Forrest, and Rayner, Benjamin Piggott, Mr. Dean of Peterborough, and others.

At the stairfold she paused to speak to Melvil in our hearing, which was to this effect, "Melvil, as thou hast been an honest servant to me, so I pray thee continue to my son, and commend me unto him. I have not impugn'd his religion, nor the religion of others, but wish him well. And as I forgive all that have offended me in Scotland, so I would that he should also; and beseech God, that he

would send him his Holy Spirit, and illuminate him." Melvil's answer was, that he would do so, and at that instant he would be secch God to assist him with his spirit. Then she demanded to speak with her priest, which was denied unto her, the rather for that she came with a superstitious pair of beads and a crucifix. She ther desired to have her women to help her, and upon her ea dest request, and saying that when other gentlewomen were executed, she had read in chronicles that they had women allowed unto them, it was permitted that she should have two named by herself, which were Mrs. Curle and Kennedy. After she came to the scaffold, first in presence of them all, her Majesty's commission was openly read; and afterwards Mr. Dean of Peterborough, according to a direction which he had received the night before from us the Earls, would have made a godly admonition to her, to repent and die well in the fear of God and charity to the world. But at the first entry, she utterly refused it, saving that she was a Catholique, and that it were a folly to move her, being so resolutely minded, and that our prayers would little avail her. Whereupon, to the intent it might appear that we, and the whole assembly, had a Christian desire to have her die well, a godly prayer conceived by Mr. Dean, was read and pronounced by us all. "That it would please Almighty God to send her his Holy Spirit and grace, and also, if it were his will, to pardon all her offences, and of his mercy to receive her into his heavenly and everlasting kingdom, and finally to bless her Majesty, and confound all her enemics;" whereof Mr. Dean, minding to repair up shortly, can shew your Lordships a copy.

This done, she pronounced a prayer upon her knees to this effect, "to be seech God to send her his Holy Spirit, and that she trusted to receive her salvation in his blood, and of his grace to be received into his kingdom; be sought God to forgive her enemies, as she forgave them; and to turn his wrath from this land; to bless the Queen's Majestie, that she might serve him. Likewise to be merciful to her son, to have compassion of his church, and althe' she was not worthy to be heard, yet she had a confidence in his mercy, and prayed all the saints to pray unto her Saviour to receive her." After this (turning towards her servants) she desired them to pray for her, that her Saviour would receive her. Then, upon petition made by the executioners, she pardoned them; and said, she was glad that the end of all her sorrows was so near. Then she misliked

the whinning and weeping of her women, saying that they rather ought to thank God for her resolution, and kissing them, willed them to depart from the scaffold, and farewell. And so resolutely kneeled down, and having a kerchief banded about her eyes, laid down her neck, whereupon the executioner proceeded. Her servants were incontinently removed, and order-taken that none should approach unto her corps, but that it should be embalmed by the surgeon appointed. And further, her crosse, apparel, and other things are retained here, and not yielded unto the executioner for inconveniences that might follow; but he is remitted to be rewarded by such as sent him hither.

This hath been the manner of our dealings in this service, whereof we have thought good to advertise your Lordships, as particularly as we could for the time, and further have thought good to signify unto your Lordships besides, that for the avoiding of all sinister and slanderous reports that may be raised to the contrary, we have caused a note thereof to be conceived to the same effect in writing, which we the said Lords have subscribed, with the hands of such other there the knights and gentlemen above named that were present at the action. And so beseeching Almighty God long to bless her Majesty with a most prosperous reign, and to confound all his and her enemies, we take our leaves. From Fotheringay-castle, the 8th of February 1586, in hast.

Your Lordships' at commandment.

N.B. This, as well as several other papers in this Appendix, is taken from a collection made by Mr. Crawfurd of Drumsoy, historiographer to Queen Anne, now in the library of the Faculty of Advocates. Mr. Crawfurd's transcriber has omitted to mention the book in the Cott. Lib. where it is to be found.

# No. LII. (Vol. III. p. 55.)

The objections against Mr. Davison, in the cause of the late Scottish Queen, must concern things done, either, 1. Before her trial at Fotheringay. 2. During that session. 3. After the same.

Cott. Lib. Cal. c. 1.

1. Before her trial, he neither is, nor can be charged to have had any hand at all in the cause of the said Queen, or done any thing whatsoever concerning the same directly or indirectly.

- 2. During that session, he remained at court, where the only interest he had therein was as her Majesty's secretary, to receive the letters from the commissioners, impart them to her Highness, and return them her answers.
- 3. After the return thence of the said commissioners, it is well known to all her council,
- 1. That he never was at any deliberation or meeting whatsoever, in parliament or council, concerning the cause of the said Queeri, till the sending down of her Majesty's warrant unto the commissioners, by the Lords and others of her council.

2. That he was no party in signing the sentence passed against her.

3. That he never penned either the proclamation publishing the same, the warrant after her death, nor any other letter or thing whatsoever concerning the same.—And,

That the only thing which can be specially and truly imputed to him, is the carrying up the said warrant unto her Majesty to be signed. She sending a great counsellor unto him, with her pleasure to that end, and carrying it to the great seal of England, by her own special direction and commandment.

For the better clearing of which truth, it is evident,

1. That the letter, being penned by the Lord Treasurer, was delivered by him unto Mr. Davison, with her Majesty's own privity, to be ready for to sign, when she should be pleased to call for it.

2. That being in his hands, he retained it at the least five or six weeks unpresented, nor once offering to carry it up, till she sent a great eounsellor unto him for the same, and was sharply reproved therefor by a great peer, in her Ma-

jesty's own presence.

3. That having signed it, she gave him an express commandment to carry it to the seal, and being sealed to send it immediately away unto the commissioners, according to the direction. Herself appointing the hall of Fotheringay for the place of execution, misliking the court-yard in divers respects; and, in conclusion, absolutely forbade him to trouble her any further, or let her hear any more hereof, till it was done; she, for her part, having (as she said) performed all that, in law or reason, could be required of her.

4. Which directions notwithstanding, he kept the warrant sealed all that night, and the greatest part of the next day in his hands, brought it back with him to the court, acquainted her Majesty withal, and finding her Majesty resolved to proceed therein, according to her former directions, and yet desirous to carry the matter so, as she might throw the burthen from herself, he absolutely resolved to quit his hands thereof.

5. And hereupon went over unto the Lord Treasurer's chamber, together with Mr. Vice-chamberlain Hatton, and in his presence restored the same into the hands of the said Lord Treasurer, of whom he had before received it, who from thenceforth kept it, till himself and the rest of the council sent it away.

council sent it away.

Which, in substance and truth, is all the part and interest the said Davison had in this cause, whatsoever is, or may be pretended to the contrary.

Touching the sending down thereof unto the commissioners, that it was the general act of her Majesty's council (as is before-mentioned), and not any private act of his, may

appear by,

1. Their own confession. 2. Their own letters sent down therewith to the commissioners. 3. The testimonies of the Lords and others to whom they were directed. As also, 4. of Mr. Beale, by whom they were sent. 5. The tenor of her Majesty's first commission for their calling to the star-chamber for the same, and private appearance and submission afterward instead thereof before the Lord Chancellor Bromley. 6. The confession of Mr. Attorney-general in open court confirmed. 7. By the sentence itself upon record. 8. Besides a common act of council, containing an answer to be verbally delivered to the Scottish ambassador then remaining here, avowing and justifying the same.

Now, where some suppose him to have given some extraordinary furtherance thereunto, the contrary may evidently appear by.

1. His former absolute refusal to sign the band of association, being earnestly pressed thereunto by her Majesty's self.

2. His excusing of himself from being used as a commissioner, in the examination of Babington and his complices, and avoiding the same by a journey to the Bath.

3. His be g a mean to stay the commissioners from pronouncing of the sentence at Fotheringay, and deferring it till they should return to her Majesty's presence.

4. His keeping the warrant in his hands six weeks unpresented, without once offering to carry it up, till her

Majesty sent expressly for the same to sign.

5. His deferring to send it away after it was sealed unto the commissioners, as he was specially commanded, staying it all that night, and the greatest part of the next day, in his hands.

6. And finally, his restoring thereof into the hands of the Lord Treasurer, of whom he had before received the same.

Which are clear and evident proofs, that the said Davison did nothing in this cause whatsoever, contrary to the duty of the place he then held in her Majesty's service.

Cal. C. 9.

This seems to be an original. On the back is this title:

The innocency of Mr. Davidson in the cause of the late Scottish Queen.

## No. LIII. (Vol. III. p. 135.)

### Letter from o, to his Majesty King James.b

From the original. Bibl. Fac. Jur. Edin. A. 1, 34. No. 4.

Most worthy Prince, the depending dangers upon your affectionates, have been such, as hath inforced silence in him who is faithfully devoted to your person, and in due time of trial will undergo all hazards of fortune for the maintenance of the just legal rights, that, by the laws divine, of nature, and of nations, is

invested in your royal person. Fall not, then, most noble and renowned Prince, from him whose Providence hath in many dangers preserved you, no doubt to be an instrument of his glory, and the good of his people. Some secrets, I find, have been revealed to your prejudice, which must proceed from some ambitious violent spirited person

b In the former editions, I printed this as a letter from Sir Robert Cecil, but am now satisfied that I was mistaken in forming this opinion. See Sir D. Dalrymple's Rem. on the Hist. of Scot. p. 233. As the letter is curious, I republish it, though I cannot pretend to say to which of the king's numerous correspondents in England it should be ascribed.

near your. Majesty in council and favour; no man in particular will I accuse, but I am sure it hath no foundation from any, with whom, for your service, I have held correspondence; otherwise I had, long since, been disabled from performance of those duties, that the thoughts of my heart endeavoureth: being only known to this worthy nobleman bearer hereof, one floted in all parts of Christendom for his fidelity to your person and state, and to Mr. David Fowlis, your most loyal servant, my first and faithful correspondent: and unto Jamas Hudsone, whom I have found in all things that concern you, most secret and assured. It may, therefore, please your Majesty, at the humble motion of O. which jargon I desire to be the indorsement of your commands unto me, that, by some token of your favour, he may understand in what terms you regard his fidelity, secrecy, and service. My passionate affection to your person (not as you are a King, but as you are a good King, and have a just title, after my sovereign, to be a great King), doth transport me to presumption. Condemn not, most noble Prince, the motives of care and love, altho' mixed with defects in judgment.

1. I, therefore, first beseech your Majesty, that for the good of those whom God, by divine Providence, hath destined to your charge, that you will be pleased to have an extraordinary care of all practicers or practices against your person; for it is not to be doubted, but that in both kingdoms, either out of ambition, faction, or fear, there are many that desire to have their sovercign in minority. whereby the sovereignty and state might be swaved by partiality of subalternate persons, rather than by true rule of power and justice. Preserve your person, and fear not the practices of man upon the point of your right, which will be preserved and maintained against all assaults of competition whatever. Thus I leave the protection of your person and royal posterity to the Almighty God of Heaven, who bless and preserve you and all yours, in all regal happiness to his glory.

2. Next to the preservation of your person, is the conservation and secret keeping of your councells, which, as I have said, are often betrayed and discovered, either out of pretended zeal in religion, turbulent faction, or base conception, the which your Majesty is to regard with all circumspection, as a matter most dangerous to your person and state, and the only means to ruin and destroy all those that stand faithfully devoted to your Majesty's service.

Some particulars, and persons of this nature, I make no doubt have been discovered by the endeavours of this nobleman, the bearer hereof, of whom your Majesty may be further informed.

- 3. The third point considerable is, that your Majesty, by all means possible, secure yourself of the good affection of the French King and states, by the negotiation of some faithful secret confident; the French naturally distasting the union of the British islands under one monarch. In Germany, I doubt not, but you have many allies and friends, but, by reason of their remote state, they do not so much importe this affair, which must be guided by a quick and sudden motion.
- 4. When God, by whose providence the period of all persons and times is determined, shall call to his kingdom of glory her Majesty (although I do assuredly hope that there will not be any question in competition, yet for that I hold it not fitting to give any minute entrance into a cause of so high a nature). I do humbly beseech your Majesty to design a secret, faithful, and experienced confident servant of yours, being of an approved fidelity and judgment, continually to be here resident, whose negotiation, it were convenient your Majesty should fortifie with such secret trust and powers, as there may not need 14 days respite to post for authority, in a cause that cannot endure 10 hours respite without varieties of danger. In the which it is to be considered, that all such as pretend least good to your establishment, will not in public oppugn your title, but out of their cunning ambition will seek to gain time by alledging their pretence of common good to the state, in propounding of good conditions for disburthening the common weale of divers hard laws, heavy impositions, corruptions, oppressions, &c. which is a main point to lead the popular. who are much disgusted with many particulars of this nature. It were, therefore, convenient, that these motives, out of your Majesty's providence, should be prevented, by your free offer in these points following, viz.

1. That your Majesty would be pleased to abolish purveyors and purveyance, being a matter infinitely offensive to the common people, and the whole kingdom, and not

profitable to the Prince.

2. That your Majesty would be pleased to dissolve the court of wards, being the ruin of all the noble and ancient families of this realm, by base matches, and evil education of their children, by which no revenue of the crown will be defrayed.

3. The abrogating the multiplicity of penal laws, generally repined against by the subject, in regard of their uncertainty, being many times altered from their true

meaning, by variety of interpretation.

4. That your Majesty will be pleased to admit free outport of the native commodities of this kingdom, now often restrained by subalternate persons for private profit, being most prejudicial to the commerce of all merchants, and a plain destruction to the true industry and manufacture of

all kingdoms, and against the profit of the crown.

These, being by your Majesty's confidents in the point of time propounded, will assuredly confirm unto your Majestie the hearts and affections of the whole kingdom, and absolutely prevent all insinuations and devices of designed patriots, that out of pretext of common good, would seek to patronize themselves in popular opinion and power, and thereby to derogate from your Majesty's bounty and free favour by princely merit of your moderation, judgment, and justice.

Your Majesty's favour thus granted to the subject, will no way impeach the profits of the crown but advance them. The disproportionable gain of some chequer officers, with the base and mercenary profits of the idle unnecessary clerks and attendants, will only suffer some detriment; but infinite will be the good unto the kingdom, which will confirm unto your Majesty the universal love and affection of the people, and establish your renown in the highest esteem

to all posterity.

The Lord preserve your Majesty, and make you tri-

umphant over all your enemies.

My care over his person whose letters pass in this pacquet, and will die before he leave to be yours, shall be no less than of mine own life, and in like esteem will I hold all your faithful confidents, notwithstanding I will hold myself reserved from being known unto any of them, in my particular devoted affections unto your Majesty; only this extraordinary worthy man, whose associate I am in his misfortune, doth know my heart, and we both will pray for you, and if we live you shall find us together.

I beseech your Majesty burn this letter, and the others; for altho' it be in an unusual hand, yet it may be dis-

covered.

Your Majesty's most devoted, and humble servant,

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END OF VOL. III.

#### THE

# WORKS

O

# WILLIAM ROBERTSON, D.D.

FELLOW OF THE ROYAL SOCIETY, AND PRINCIPAL OF THE UNIVERSITY, OF EDINBURGH:

HISTORIOGRAPHER TO HIS MAJESTY FOR SCOTLAND;
AND MEMBER OF THE ROYAL ACADEMY OF HISTORY AT MADRID.

TO WHICH IS PREFIXED.

## An Account of his Life and Writings,

BY

THE REV. ROBERT LYNAM, A.M.

Assistant Chaplain of the Magdalen, &c.

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THE

## HISTORY

OF

#### THE REIGN

OF THE

## EMPEROR CHARLES V.

WITH

A VIEW OF THE PROGRESS OF SOCIETY IN EUROPE,

FROM THE SUBVERSION OF THE ROMAN EMPIRE, TO THE BEGINNING OF THE SIXTEENTH CENTURY.

### THE KING.

SIR,

I PRESUME to lay before your Majesty the History of a period, which, if the abilities of the writer were equal to the dignity of the subject, would not be unworthy the attention of a Monarch, who is no less a judge than a patron of literary merit.

History claims it as her prerogative to offer instruction to Kings as well as to their people. What reflections the reign of the Emperor Charles V. may suggest to your Majesty, it becomes not me to conjecture. But your subjects cannot observe the various calamities, which that Monarch's ambition to be distinguished as a conqueror brought upon his dominions, without recollecting the felicity of their own times, and looking up with gratitude to their Sovereign, who, during the fervour of youth, and amidst the career of victory, possessed such self-command and maturity of judgment, as to set bounds to his own triumphs, and prefer the blessings of peace to the splendour of military glory.

Posterity will not only celebrate the wisdom of your Majesty's choice, but will enumerate the many virtues which render your reign conspicuous for a sacred regard to all the duties incumbent on the Sovereign of a free people.

It is our happiness to feel the influence of these virtues; and to live under the dominion of a Prince, who delights more in promoting the public welfare, than in receiving the just praise of his royal beneficence.

I am, Sir,

Your Majesty's most faithful Subject, And most dutiful Servant,

WILLIAM ROBERTSON.

## PREFACE.

No period in the history of one's own country can be considered as altogether uninteresting. Such transactions as tend to illustrate the progress of its constitution, laws, or manners, merit the utmost attention. Even remote and minute events are objects of a curiosity, which, being natural to the human mind, the

gratification of it is attended with pleasure.

But, with respect to the history of foreign states, we must set other bounds to our desire of information. The universal progress of science, during the two last centuries, the art of printing, and other obvious causes, have filled Europe with such a multiplicity of histories, and with such vast collections of historical materials. that the term of human life is too short for the study or even the perusal them. It is necessary, then, not only for those who are called to conduct the affairs of nations, but for such as inquire and reason concerning them, to remain satisfied with a general knowledge of distant events, and to confine their study of history in detail chiefly to that period in which the several states. of Europe having become intimately connected, the operations of one power are so felt by all, as to influence their councils and to regulate their measures.

Some boundary, then, ought to be fixed in order to separate these periods. An era should be pointed out, prior to which each country, little connected with those around it, may trace its own history apart; after which the transactions of every considerable nation in Europe become interesting and instructive to all. With this

intention I undertook to write the history of the Emperor Charles V. It was during his administration that the powers of Europe were formed into one great political system, in which each took a station, wherein it has since remained, with less variation than could have been expected, after the shocks occasioned by so many internal revolutions, and so many foreign wars. The great events which happened then have not hitherto spent their force; the political principles and maxims then established still continue to operate; the ideas concerning the balance of power, then introduced or rendered general, still influence the councils of nations.

The age of Charles V. may therefore be considered as the period at which the political state of Europe began to assume a new form. I have endeavoured to render my account of it an introduction to the history of Europe subsequent to his reign. While his numerous biographers describe his personal qualities and actions; while the historians of different countries relate occurrences the consequences of which were local or transient, it hath been my purpose to record only those great transactions in his reign, the effects of which were universal, or continue to be permanent.

As my readers could derive little instruction from such a history of the reign of Charles V. without some information concerning the state of Europe previous to the sixteenth century, my desire of supplying this has produced a preliminary volume, in which I have attempted to point out and to explain the great causes and events, to whose operation all the improvements in the political state of Europe, from the subversion of the Roman Empire to the beginning of the sixteenth century, must be ascribed. I have exhibited a view of the progress of society in Europe, not only with respect to interior government, laws, and manners, but with respect to the command of the national force requisite in foreign operations; and I have described the political constitution of the principal states in Europe at the time when Charles V. began his reign.

In this part of my work I have been led into several critical disquisitions, which belong more properly to the province of the lawyer or antiquary, than to that of the historian. These I have placed at the end of the first volume, under the title of Proofs and Illustrations. Many of my readers will, probably, give little attention to such researches. To some they may, perhaps, appear the most curious and interesting part of the work. I have carefully pointed out the sources from which I have derived information, and have cited the writers on whose authority I rely with a minute exactness, which might appear to border upon ostentation, if it were possible to be vain of having read books, many of which nothing but the duty of examining with accuracy whatever I laid before the public would have induced me to open. As my inquiries conducted me often into paths which were obscure or little frequented, such constant references to the authors who have been my guides were not only necessary for authenticating the facts which are the foundations of my reasonings, but may be useful in pointing out the way to such as shall hereafter hold the same course, and in enabling them to carry on their researches with greater facility and success.

Every intelligent reader will observe one omission in my work, the reason of which it is necessary to explain. I have given no account of the conquests of Mexico and Peru, or of the establishment of the Spanish colonies in the continent and islands of America. The history of these events I originally intended to have related at considerable length. But upon a nearer and more attentive consideration of this part of my plan, I found that the discovery of the New World; the state of society among its ancient inhabitants; their character, manners, and arts; the genius of the European settlements in its various provinces, together with the influence of these upon the systems of policy or commerce in Europe, were subjects so splendid and important, that a superficial view of them could afford little

satisfaction; and, on the other hand, to treat of them as extensively as they merited, must produce an episode disproportionate to the principal work. I have therefore reserved these for a separate history; which, if the performance now offered to the public shall receive its approbation, I purpose to undertake.

Though, by omitting such considerable but detached articles in the reign of Charles V., I have circumscribed my narration within more narrow limits, I am yet persuaded, from this view of the intention and nature of the work which I thought it necessary to lay before my readers, that the plan must still appear to them too extensive, and the undertaking too arduous. I have often felt them to be so. But my conviction of the utility of such a history prompted me to persevere. With what success I have executed it, the public must now judge. I wait, not without solicitude, for its decision; to which I shall submit with a respectful silence.

# VIEW

OF THE

#### PROGRESS OF SOCIETY

IN

## EUROPE,

FROM THE

SUBVERSION OF THE ROMAN EMPIRE,

TO THE

BEGINNING OF THE SIXTEENTH CENTURY.

#### SECTION I.

View of the Progress of Society in Europe, with respect to interior Government, Laws, and Manners.

Two great revolutions have happened in The effects the political state and in the manners of the of the Roman power European nations. The first was occasioned on the state by the progress of the Roman power; the of Europe. second by the subversion of it. When the spirit of conquest led the armies of Rome beyond the Alps, they found all the countries which they invaded inhabited by people whom they denominated barbarians, but who were nevertheless brave and independent. These defended their ancient possessions with obstinate valour. It was by the superiority of their discipline, rather than that of their courage, that the Romans gained any advantage over them. A single battle did not, as among the effeminate inhabitants of Asia, decide the fate of a state. The vanquished people resumed their arms with fresh spirit, and their undisciplined valour, animated by a love of liberty, supplied the want of conduct as well as of union.

During those long and fierce struggles for dominion or independence, the countries of Europe were successively laid waste, a great part of their inhabitants perished in the field, many were carried into slavery, and a feeble remnant, incapable of farther resistance, submitted to the Roman

power.

The improvements which it introduced.

The Romans having thus desolated Europe, set themselves to civilize it. The form of government which they established in the conquered provinces, though severe, was regular, and preserved public tranquillity. As

a consolation for the loss of liberty, they communicated their arts, sciences, language, and manners, to their new subjects. Europe began to breathe, and to recover strength after the calamities which it had undergone; agriculture was encouraged; population increased; the ruined cities were rebuilt; new towns were founded; an appearance of prosperity succeeded, and repaired, in some degree, the havoc of war.

The bad consequences of their dominion. This state, however, was far from being happy or favourable to the improvement of the human mind. The vanquished nations were disarmed by their conquerors, and overawed by soldiers kept in pay to restrain them. They were given up as a prey to ra-

pacious governors, who plundered them with impunity; and were drained of their wealth by exorbitant taxes, levied with so little attention to the situation of the provinces, that the impositions were often increased in proportion to their inability to support them. They were deprived of their most enterprising citizens, who resorted to a distant capital in quest of preferment, or of riches; and were accustomed in all their actions to look up to a superior, and tamely to receive his commands. Under so many depressing circumstances, it

was hardly possible that they could retain vigour or generosity of mind. The martial and independent spirit, which had distinguished their ancestors, became, in a great measure, extinct among all the people subjected to the Roman yoke; they lost not only the habit but even the capacity of deciding for themselves, or of acting from the impulse of their own minds; and the dominion of the Romans, like that of all great empires, degraded and debased the human species. [A]

The irruption of the barbarous nations. A society in such a state could not subsist long. There were defects in the Roman government, even in its most perfect form, which threatened its dissolution. Time ripened these original seeds of corruption,

and gave birth to many new disorders. A constitution, unsound, and worn out, must have fallen into pieces of itself, without any external shock. The violent irruption of the Goths, Vandals, Huns, and other barbarians, hastened this event, and precipitated the downfal of the empire. New nations seemed to arise, and to rush from unknown regions, in order to take vengeance on the Romans for the calamities which they had inflicted on mankind. These fierce tribes either inhabited the various provinces in Germany which had never been subdued by the Romans, or were scattered over those vast countries in the north of Europe, and north-west of Asia, which are now occupied by the Danes, the Swedes, the Poles, the subjects of the Russian empire, and the Tartars. Their condition, and transactions, previous to their invasion of the empire, are but little known. Almost all our information with respect to these is derived from the Romans; and as they did not penetrate far into countries which were at that time uncultivated and uninviting, the accounts of their original state given by the Roman historians are extremely imperfect. The rude inhabitants themselves, destitute of science as well as of records, and without leisure or curiosity to inquire into remote events, retained perhaps some indistinct memory of recent occurrences, but beyond these, all was buried in oblivion.

or involved in darkness and in fable. [B]

State of the countries from which they issued.

The prodigious swarms which poured in upon the empire from the beginning of the fourth century to the final extinction of the Roman power, have given rise to an opinion that the countries whence they issued were crowded with inhabitants; and various theo-

ries have been formed to account for such an extraordinary degree of population as hath procured these countries the appellation of The Storehouse of Nations. But if we consider that the countries possessed by the people who invaded the empire were of vast extent: that a great part of these was covered with woods and marshes; that some of the most considerable of the barbarous nations subsisted entirely by hunting or pasturage, in both which states of society large tracts of land are required for maintaining a few inhabitants; and that all of them were strangers to the arts and industry, without which population cannot increase to any great degree, we must conclude, that these countries could not be so populous in ancient times as they are in the present, when they still continue to be less peopled than any other part of Europe or of Asia.

The people fit for daring enterprises.

But the same circumstances that prevented the barbarous nations from becoming populous, contributed to inspire, or to strengthen, the martial spirit by which they were distinguished. Inured by the rigour of

their climate, or the poverty of their soil, to hardships which rendered their bodies firm, and their mind vigorous; accustomed to a course of life which was a continual preparation for action; and disdaining every occupation but that of war or of hunting; they undertook and prosecuted their military enterprises with an ardour and impetuosity, of which men softened by the refinements of more polished times can scarcely form any idea. [C]

The motives of their first excursions. Their first inroads into the empire proceeded rather from the love of plunder, than from the desire of new settlements. Roused to arms by some enterprising or popular leader, they sallied out of their forests; broke

in upon the frontier provinces with irresistible violence; put all who opposed them to the sword; carried off the most valuable effects of the inhabitants; dragged along multitudes of captives in chains; wasted all before them with fire or sword; and returned in triumph to their wilds and fastnesses. Their success, together with the accounts which they gave of the unknown conveniences and luxuries that abounded in countries better cultivated, or blessed with a milder climate than their own, excited new adventurers, and exposed the frontier to new devastations.

Their reasons for settling in the countries which they conquered. When nothing was left to plunder in the adjacent provinces, ravaged by frequent incursions, they marched farther from home, and finding it difficult or dangerous to return, they began to settle in the countries which they had subdued. The sudden and short excursions in quest of booty, which

had alarmed and disquieted the empire, ceased; a more dreadful calamity impended. Great bodies of armed men, with their wives and children, and slaves and flocks, issued forth, like regular colonies, in quest of new settlements. People who had no cities, and seldom any fixed habitation, were so little attached to their native soil, that they migrated without reluctance from one place to another. New adventurers followed them. The lands which they deserted were occupied

The extent of their settlements. by more remote tribes of barbarians. These, in their turn, pushed forward into more fertile countries, and, like a torrent continually increasing, rolled on, and swept every thing

before them. In less than two centuries from their first irruption, barbarians of various names and lineage plundered and took possession of Thrace, Pannonia, Gaul,

Spain, Africa, and at last of Italy and Rome itself. The vast fabric of the Roman power, which it had been the work of ages to perfect, was in that short period overturned from the foundation.

The circumstances which occasioned the downfal of the Roman Empire.

Many concurring causes prepared the way for this great revolution, and ensured success to the nations which invaded the empire. The Roman commonwealth had conquered the world by the wisdom of its civil maxims, and the rigour of its military discipline. But, under the emperors, the former were forgot-

ten or despised, and the latter was gradually relaxed. The armies of the empire in the fourth and fifth centuries bore scarcely any resemblance to those invincible legions which had been victorious wherever they marched. Instead of freemen, who voluntary took arms from the love of glory, or of their country, provincials and barbarians were bribed or forced into service. These were too feeble, or too proud, to submit to the fatigue of military duty. They even complained of the weight of their defensive armour as intolerable, and laid it aside. Infantry, from which the armies of ancient Rome derived their vigour and stability, fell into contempt; the effeminate and undisciplined soldiers of later times could hardly be brought to venture into the field but on horseback. These wretched troops, however, were the only guardians of the empire. The jealousy of despotism had deprived the people of the use of arms; and subjects, oppressed and rendered incapable of defending themselves, had neither spirit nor inclination to resist their invaders, from whom they had little to fear, because their condition could hardly be rendered more unhappy. At the same time that the martial spirit became extinct, the revenues of the empire gradually diminished. The taste for the luxuries of the east increased to such a pitch in the imperial court, that great sums were carried into India, from which, in the channel of commerce, money never returns. By the large subsidies paid to the barbarous nations, a still greater

quantity of specie was withdrawn from circulation. frontier provinces, wasted by frequent incursions, orld, came unable to pay the customary tribute; and ight wealth of the world, which had long centred in the, capital of the empire, ceased to flow thither in the same abundance, or was diverted into other channels. The limits of the empire continued to be as extensive as ever, while the spirit requisite for its defence declined, and its resources were exhausted. A vast body, languid, and almost unanimated, became incapable of any effort to save itself, and was easily overpowered. The emperors, who had the absolute direction of this disordered system, sunk in the softness of eastern luxury, shut up within the walls of a palace, ignorant of war, unacquainted with affairs, and governed entirely by women and eunuchs, or by ministers equally effeminate, trembled at the approach of danger, and, under circumstances which called for the utmost vigour in counsel as well as in action, discovered all the impotent irresolution of fear and of folly.

stances which contributed to the success of the barbarous nations.

In every respect the condition of the bar-The circum- barous nations was the reverse of that of the Romans. Among the former, the martial spirit was in full vigour; their leaders were hardy and enterprising; the arts which had enervated the Romans were unknown; and such was the nature of their military institu-. tions, that they brought forces into the field

without any trouble, and supported them at little ex-The mercenary and effeminate troops stationed on the frontier, astonished at their fierceness, either fled at their approach, or were routed on the first onset. The feeble expedient to which the emperors had recourse, of taking large bodies of barbarians into pay, and of employing them to repel new invaders, instead of retarding, hastened the destruction of the empire. These mercenaries soon turned their arms against their masters, and with greater advantage than ever; for, by serving in the Roman armies, they had acquired all the

disciptine or skill in war which the Romans still retained; and, upon adding these to their native ferocity, they became altogether irresistible.

The spirit with which they carried on war.

Ent though, from these and many other causes, the progress and conquests of the nations which overran the empire became so extremely rapid, they were accompanied with horrible devastations, and an incredible

destruction of the human species. Civilized nations, which take arms upon cool reflection, from motives of policy or prudence, with a view to guard against some distant danger, or to prevent some remote contingency, carry on their hostilities with so little rancour or animosity, that war among them is disarmed of half its terrors. Barbarians are strangers to such refinements. They rush into war with impetuosity, and prosecute it with violence. Their sole object is to make their enemies feel the weight of their vengeance; nor does their rage subside until it be satiated with inflicting on them every possible calamity. It is with such a spirit that the savage tribes in America carry on their petty wars. It was with the same spirit that the more powerful and no less fierce barbarians in the north of Europe and of Asia fell upon the Roman empire.

Wherever they marched, their route was marked with blood. They ravaged or destroyed all around them. They made no distinction between what was sacred and what was profane. They respected no age, or sex, or rank. What escaped the fury of

the first inundation, perished in those which followed it. The most fertile and populous provinces were converted into deserts, in which were scattered the ruins of villages and cities, that afforded shelter to a few miserable inhabitants, whom chance had preserved, or the sword of the enemy, wearied with destroying, had spared. The conquerors who first settled in the countries which they had wasted, were expelled or exterminated by new invaders, who, coming from regions

farther removed from the civilized parts of the world, were still more fierce and rapacious. This brought fresh calamities upon mankind, which did not cease, until the north, by pouring forth successive swarms, was drained of people, and could no longer furnish instruments of destruction. Famine and pestilence, which always march in the train of war, when it ravages with such inconsiderate cruelty, raged in every part of Europe, and completed its sufferings. If a man were called to fix upon the period in the history of the world during which the condition of the human race was most calamitous and afflicted, he would, without hesitation, name that which elapsed from the death of Theodosius the Great, to the establishment of the Lombards in Italy. The contemporary authors, who beheld that scene of desolation, labour and are at a loss for expressions to describe the horror of it. The scourge of God, the destroyer of nations, are the dreadful epithets by which they distinguish the most noted of the barbarous leaders; and they compare the ruin which they had brought on the world, to the havoc occasioned by earthquakes, conflagrations, or deluges, the most formidable and fatal calamities which the imagination of man can conceive.

The universal change which they occasioned in the state of Europe. But no expressions can convey so perfect an idea of the destructive progress of the barbarians, as that which must strike an attentive observer, when he contemplates the total change which he will discover in the state of Europe, after it began to recover

some degree of tranquillity, towards the close of the sixth century. The Saxons were, by that time, masters of the southern and more fertile provinces of Britain; the Franks of Gaul; the Huns of Pannonia; the Goths of Spain; the Goths and Lombards of Italy and the adjacent provinces. Very faint vestiges of the Roman policy, jurisprudence, arts, or literature, re-

<sup>&</sup>lt;sup>a</sup> Theodosius died A. D. 395; the reign of Alboinus in Lombardy began A. D. 571; so that this period was 176 years.

mained. New forms of government, new laws, new manners, new dresses, new languages, and new names of men and countries, were every where introduced. To make a great or sudden alteration, with respect to any of these, utless where the ancient inhabitants of a country have been almost totally exterminated, has proved an undertaking beyond the power of the greatest conquerors. [D] The great change which the settlement of the barbarous nations occasioned in the state of Europe may, therefore, be considered as a more decisive proof than even the testimony of contemporary historians, of the destructive violence with which these invaders carried on their conquest, and of the havoc which they had made from one extremity of this quarter of the globe to the other. [E]

From this state of disorder the laws of government now established must be traced.

In the obscurity of the chaos occasioned by this general wreck of nations, we must search for the seeds of order, and endeavour to discover the first rudiments of the policy and laws now established in Europe. To this source the historians of its different kingdoms have attempted, though with less attention and industry than the importance of the inquiry merits, to trace back the in-

stitutions and customs peculiar to their countrymen. It is not my province to give a minute detail of the progress of government and manners in each particular nation whose transactions are the object of the following history. But, in order to exhibit a just view of the state of Europe at the opening of the sixteenth century, it is necessary to look back and to contemplate the condition of the northern nations upon their first settlement in those countries which they occupied. It is necessary to mark the great steps by which they advanced from barbarism to refinement, and to point out those general principles and events which, by their uniform as well as extensive operation, conducted all of them to that degree of improvement in policy and

in manners which they had attained at the period when Charles V. began his reign.

The principles on which the northern nations made their settlements in Europe.

When nations subject to despotic government make conquests, these serve only to extend the dominion and power of their master. But armies composed of freemen conquer for themselves, not for their leaders. The people who overturned the Roman empire, and settled in its various provinces, were of the latter class. Not only the dif-

ferent nations that issued from the north of Europe, which has always been considered as the seat of liberty, but the Huns and Alans who inhabited part of those countries which have been marked out as the peculiar region of servitude, be enjoyed freedom and independence in such a high degree as seems to be scarcely compatible with a state of social union, or with the subordination necessary to maintain it. They followed the chieftain who led them forth in quest of new settlements, not by constraint, but from choice; not as soldiers whom he could order to march, but as volunteers who offered to accompany him. [F] considered their conquests as a common property, in which all had a title to share, as all had contributed to acquire them. [G] In what manner, or by what principles, they divided among them the lands which they seized, we cannot now determine with any certainty. There is no nation in Europe whose records reach back to this remote period; and there is little information to be got from the uninstructive and meagre chronicles, compiled by writers ignorant of the true end, and unacquainted with the proper objects, of history.

The feudal government gradually established among them. This new division of property, however, together with the maxims and manners to which it gave rise, gradually introduced a species of government formerly unknown. This singular institution is now distinguished by the name of the Feudal System; and

b De l'Esprit des Loix, liv. avii. ch. 3. [F] Note VI. [G] Note VII.

though the barbarous nations which framed it settled in their new territories at different times, came from different countries, spoke various languages, and were under the command of separate leaders, the feudal policy and laws were established, with little variation, in every kingdom of Europe. This amazing uniformity had induced some authors to believe that all these nations, notwithstanding so many apparent circumstances of distinction, were originally the same people. But it may be ascribed, with great probability, to the similar state of society and of manners to which they were accustomed in their native countries, and to the similar situation in which they found themselves on taking possession of their new domains.

As the conquerors of Europe had their acquisitions to maintain, not only against such of the ancient inhabitants as they had spared, but against the more formidable inroads of new invaders, self-defence was their

National defence the great object of feudal policy. chief care, and seems to have been the chief object of their first institutions and policy. Instead of those loose associations which, though they scarcely diminished their personal independence, had been sufficient for their security while they remained in their

original countries, they saw the necessity of uniting in more close confederacy, and of relinquishing some of their private rights in order to attain public safety. Every freeman, upon receiving a portion of the lands which were divided, bound himself to appear in arms against the enemies of the community. This military service was the condition upon which he received and held his lands; and, as they were exempted from every other burden, that tenure, among a warlike people, was deemed both easy and honourable. The king or general, who led them to conquest, continuing still to be the head of the colony, had; of course, the largest portion allotted to him. Having thus acquired the means of rewarding past services, as well as of gaining

<sup>&</sup>lt;sup>e</sup> Procop. de Bello Vandal. ap. Script. Byz. edit. Ven. vol. i. p. 345.

new adherents, he parcelled out his lands with this view, binding those on whom they were bestowed to resort to his standard with a number of men in proportion to the extent of territory which they received, and to bear arms in his defence. His chief officers imitated the example of the sovereign, and, in distributing portions of their lands among their dependants, annexed the same condition to the grant. Thus a feudal kingdom resembled a military establishment rather than a civil institution. The victorious army, cantoned out in the country which it had seized, continued ranged under its proper officers, and subordinate to military command. The names of a soldier and of a freeman were synonymous.d Every proprietor of land, girt with a sword, was ready to march at the summons of his superior, and to take the field against the common enemy.

The feudal government defective in its provisions for interior order in society.

But though the feudal policy seems to be so admirably calculated for defence against the assaults of any foreign power, its provisions for the interior order and tranquillity of society were extremely defective. The principles of disorder and corruption are discernible in that constitution under its best and most perfect form. They soon un-

folded themselves, and, spreading with rapidity through every part of the system, produced the most fatal effects. The bond of political union was extremely feeble; the sources of anarchy were innumerable. The monarchical and aristocratical parts of the constitution, having no intermediate power to balance them, were perpetually at variance, and justling with each other. The powerful vassals of the crown soon extorted a confirmation for life of those grants of land, which being at first purely gratuitous, had been bestowed only during pleasure. Not satisfied with this, they prevailed to have them converted into hereditary possessions. One step more completed their usurpations, and

d Du Cange Glossar. voc. Miles.

rendered them unalienable. [H] With an ambition no less enterprising, and more preposterous, they appropriated to themselves titles of honour, as well as offices of power or trust. These personal marks of distinction, which the public admiration bestows on illustrious merit, or which the public confidence confers on extraordinary abilities, were annexed to certain families, and transmitted, like fiefs, from father to son, by hereditary right. The crown vassals having thus secured the possession of their lands and dignities, the nature of the feudal institutions, which, though founded on subordination, verged to independence, led them to new and still more dangerous encroachments on the prerogatives of the sovereign. They obtained the power of supreme jurisdiction, both civil and criminal, within their own territories; the right of coining money; together with the privilege of carrying on war against their private enemies, in their own name, and by their own authority. The ideas of political subjection were almost entirely lost, and frequently scarce any appearance of feudal subordination remained. Nobles, who had acquired such enormous power, scorned to consider themselves as subjects. They aspired openly at being independent; the bonds which connected the principal members of the constitution with the crown were dissolved. A kingdom, considerable in name and in extent, was broken into as many separate principalities as it contained powerful barons. A thousand causes of jealousy and discord subsisted among them, and gave rise to as many wars. Every country in Europe, wasted or kept in continual alarm during these endless contests, was filled with castles and places of strength erected for the security of the inhabitants, not against foreign force, but against internal hostilities. A universal anarchy, destructive, in a great measure, of all the advantages which men expect to derive from society, prevailed. The people, the most numerous as well as the most useful part of the community, were either reduced to a state of actual servitude, or treated with the same insolence and rigour as if they had been degraded into that wretched condition. [I] The king, stripped of almost every prerogative, and without authority to enact or to execute salutary laws, could neither protect the innocent nor punish the guilty. The nobles, superior to all restraint, harassed each other with perpetual wars, oppressed their fellow-subjects, and humbled or insulted their sovereign. To crown all, time gradually fixed, and rendered venerable, this pernicious system which violence had established.

It prevented nations likewise from acting with vigour in their external operations. Such was the state of Europe with respect to the interior administration of government from the seventh to the eleventh century. All the external operations of its various states, during this period, were, of course, extremely feeble. A kingdom dismembered and torn with dissension, without any common interest to rouse, or any common head to conduct its force, was

incapable of acting with vigour. Almost all the wars in Europe, during the ages which I have mentioned, were trifling, indecisive, and productive of no considerable event. They resembled the short incursions of pirates or banditti, rather than the steady operations of a regular army. Every baron, at the head of his vassals, carried on some petty enterprise, to which he was prompted by his own ambition or revenge. The state itself, destitute of union, either remained altogether inactive, or if it attempted to make any effort, that served only to discover its impotence. The superior genius of Charlemagne, it is true, united all these disjointed and discordant members, and forming them again into one body, restored to government that degree of activity which distinguishes his reign, and renders the transactions of it objects not only of attention but of admiration to more enlightened times. But this state of union and vigour, not being natural to the feudal government, was of short duration. Immediately upon his death, the spirit which animated and sustained the vast system which he had established being withdrawn, it broke into pieces. All the calamities which flow from anarchy and discord, returning with additional force, afflicted the different kingdoms into which his empire was split. From that time to the eleventh century, a succession of uninteresting events, a series of wars, the motives as well as the consequences of which were unimportant, fill and deform the annals of all the nations in Europe.

To these pernicious effects of the feudal The fatal anarchy may be added its fatal influence on effects of the character and improvement of the human this state mind. If men do not enjoy the protection of society on sciences of regular gevernment, together with the and arts; expectation of personal security, which naturally flows from it, they never attempt to make progress in science, nor aim at attaining refinement in taste or in manners. That period of turbulence, oppression, and rapine, which I have described, was illsuited to favour improvement in any of these. In less than a century after the barbarous nations settled in their new conquests, almost all the effects of the knowledge and civility which the Romans had spread through Europe disappeared. Not only the arts of elegance, which minister to luxury, and are supported by it, but many of the useful arts, without which life can scarcely be considered as comfortable, were neglected or lost. Literature, science, taste, were words little in use during the ages which we are contemplating; or, if they occur at any time, eminence in them is ascribed to persons and productions so contemptible. that it appears their true import was little understood. Persons of the highest rank, and in the most eminent stations, could not read or write. Many of the clergy did not understand the breviary, which they were obliged daily to recite; some of them could scarcely read

it. [K] The memory of past transactions was, in a great degree, lost, or preserved in annals filled with trifling events or legendary tales. Even the codes of laws published by the several nations which established themselves in the different countries of Europe, fell into disuse, while, in their place, customs, vague and capricious, were substituted. The human mind, neglected, uncultivated, and depressed, continued in the most profound ignorance. Europe, during four centuries, produced few authors who merit to be read, either on account of the elegance of their composition, or the justness and novelty of their sentiments. There are few inventions, useful or ornamental to society, of which that long period can boast.

Even the Christian religion, though its Upon reliprecepts are delivered, and its institutions gion. are fixed in Scripture, with a precision which should have exempted them from being misinterpreted or corrupted, degenerated, during those ages of darkness, into an illiberal superstition. The barbarous nations, when converted to Christianity, changed the object, not the spirit, of their religious worship. They endeavoured to conciliate the favour of the true God by means not unlike to those which they had not employed in order to appease their false deities. Instead of aspiring to sanctity and virtue, which alone can render men acceptable to the great Author of order and of excellence, they imagined that they satisfied every obligation of duty by a scrupulous observance of external ceremonies. [L] Religion, according to their conceptions of it, comprehended nothing else; and the rites, by which they persuaded themselves that they should gain the favour of Heaven, were of such a nature as might have been expected from the rude ideas of the ages which devised and introduced them. They were either so unmeaning as to be altogether unworthy of the Being to whose honour they were consecrated, or so absurd as to be a disgrace to reason and huma-

[K] Note X.

[L] Note XI.

nity. [M] Charlemagne in France, and Alfred the Great in England, endeavoured to dispel this darkness, and gave their subjects a short glimpse of light and knowledge. But the ignorance of the age was too powerful for their efforts and institutions. The darkness returned, and settled over Europe more thick and heavy than before.

Upon the character and virtues of the human mind.

As the inhabitants of Europe, during these centuries, were strangers to the arts which embellish a polished age, they were destitute of the virtues which abound among people who continue in a simple state.

Force of mind, a sense of personal dignity, gallantry in enterprise, invincible perseverance in execution, contempt of danger and of death, are the characteristic virtues of uncivilized nations. But these are all the offspring of equality and independence, both which the feudal institutions had destroyed. The spirit of domination corrupted the nobles; the yoke of servitude depressed the people; the generous sentiments inspired by a sense of equality were extinguished, and hardly any thing remained to be a check on ferocity and violence. Human society is in its most corrupted state, at that period when men have lost their original independence and simplicity of manners, but have not attained that degree of refinement which introduces a sense of decorum and of propriety in conduct, as a restraint on those passions which lead to heinous crimes. Accordingly, a greater number of those atrocious actions, which fill the mind of man with astonishment and horror, occur in the history of the centuries under review, than in that of any period of the same extent in the annals of Europe. If we open the history of Gregory of Tours, or of any contemporary author, we meet with a series of deeds of cruelty, perfidy, and revenge, so wild and enormous, as almost to exceed belief.

But, according to the observation of an elegant [M] Note XII.

From the beginning of the eleventh century, government and manners begin to improve.

and profound historian, there is an ultimate point of depression, as well as of exaltation, from which human affairs naturally return in a contrary progress, and beyond which they never pass either in their advancement or decline. When defects, either in the form or in the administration of government, occasion such disorders in society

as are excessive and intolerable, it becomes the common interest to discover and to apply such remedies as will most effectually remove them. Slight inconveniences may be long overlooked or endured; but when abuses grow to a certain pitch, the society must go to ruin, or must attempt to reform them. orders in the feudal system, together with the corruption of taste and manners consequent upon these, which had gone on increasing during a long course of years, seemed to have attained their utmost point of excess towards the close of the eleventh century. From that era we may date the return of government and manners in a contrary direction, and can trace a succession of causes and events which contributed, some with a nearer and more conspicuous, others with a more remote and less perceptible influence, to abolish confusion and barbarism, and to introduce order, regularity, and refinement.

Necessary to point out the causes and events which contribute towards this improvement. In pointing out and explaining these causes and events, it is not necessary to observe the order of time with a chronological accuracy; it is of more importance to keep in view their mutual connexion and dependance, and to shew how the operation of one event, or one cause, prepared the way for another, and augmented its influence. We have hitherto been contemplating the pro-

gress of that darkness which spread over Europe, from its first approach to the period of greatest obscuration; a more pleasant exercise begins here;

e Hume's History of England, vol. ii. p. 441.

to observe the first dawnings of returning light, to mark the various accessions by which it gradually increased and advanced towards the full splendour of day.

The tendency of the crusades to introduce a change in government and manners.

The more remote causes of these expeditions. I. The crusades, or expeditions in order to rescue the Holy Land out of the hands of infidels, seemed to be the first event that roused Europe from the lethargy in which it had been long sunk, and that tended to introduce any considerable change in government or in manners. It is natural to the human mind to view those places which have been distinguished by being the residence of any illustrious personage, or the scene of any great transaction, with some degree of delight and veneration. To this principle must be ascribed the superstitious

devotion with which Christians, from the earliest ages of the church, were accustomed to visit that country which the Almighty had selected as the inheritance of his favourite people, and in which the Son of God had accomplished the redemption of mankind. distant pilgrimage could not be performed without considerable expense, fatigue, and danger, it appeared the more meritorious, and came to be considered as an expiation for almost every crime. An opinion which spread with rapidity over Europe about the close of the tenth and beginning of the eleventh century, and which gained universal credit, wonderfully augmented the number of credulous pilgrims, and increased the ardour with which they undertook this useless voyage. The thousand years mentioned by St. John were supposed to be accomplished, and the end of the world to be at hand. A general consternation seized mankind; many relinquished their possessions; and, abandoning their friends and families, hurried with precipitation to the Holy Land, where they imagined that Christ would

quickly appear to judge the world. While Palestine continued subject to the caliphs, they had encouraged the resort of pilgrims to Jerusalem; and considered this as a beneficial species of commerce, which brought into their dominions gold and silver, and carried nothing out of them but relics and consecrated trinkets. But the Turks having conquered Syria about the middle of the eleventh century, pilgrims were exposed to outrages of every kind from these fierce barbarians.h This change, happening precisely at the juncture when the panic terror which I have mentioned rendered pilgrimages most frequent, filled Europe with alarm and indignation. Every person who returned from Palestine related the dangers which he had encountered in visiting the Holy City, and described with exaggeration the cruelty and vexations of the Turks.

The immediate occasion of them.

When the minds of men were thus prepared, the zeal of a fanatical monk, who conceived the idea of leading all the forces of Christendom against the infidels, and of driving them out of the Holy Land by vio-

lence, was sufficient to give a beginning to that wild enterprise. Peter the Hermit, for that was the name of this martial apostle, ran from province to province, with a crucifix in his hand, exciting princes and people to this holy war, and wherever he came kindled the same enthusiastic ardour for it with which he himself was animated. The council of Placentia, where upwards of thirty thousand persons were assembled, pronounced the scheme to have been suggested by the immediate inspiration of Heaven. In the council of Clermont, still more numerous, as soon as the measure was proposed, all cried out with one voice, "It is the will of God." Persons of all ranks catched the con-

g Chronic. Will. Godelli ap. Bouquet Recueil des Historiens de France, tom. x. p. 262. Vita Abbonis, ibid. p. 332. Chronic. S. Pantaleonis ap. Eccard. Corp. Scrip. medii zvi, vol. i. p. 909. Annalista Saxo, ibid. 576.

h Jo. Dan. Schoepflini de sacris Gallorum in orientem expeditionibus, p. 4. Argent. 1726. 4to.

tagion; not only the gallant nobles of that age, with their martial followers, whom we may suppose apt to be allured by the boldness of a romantic enterprise, but men in the more humble and pacific stations of life: ecclesiastics of every order, and even women and children, engaged with emulation in an undertaking which was deemed sacred and meritorious. If we may believe the concurring testimony of contemporary authors, six millions of persons assumed the cross, which was the badge that distinguished such as devoted themselves to this holy warfare. All Europe, says the princess Anna Comnena, torn up from the foundation, seemed ready to precipitate itself in one united body upon Asia.k Nor did the fumes of this enthusiastic zeal evaporate at once: the frenzy was as lasting as it was extravagant. During two centuries Europe seems to have had no object but to recover, or keep possession of the Holy Land; and through that period vast armies continued to march thither. [N]

The success of the crusades.

The first efforts of valour, animated by enthusiasm, were irresistible; part of the Lesser Asia, all Syria and Palestine, were wrested from the infidels; the banner of the

cross was displayed on Mount Sion; Constantinople, the capital of the Christian empire in the East, was afterward seized by a body of those adventurers, who had taken arms against the Mahometans, and an earl of Flanders, and his descendants, kept possession of the imperial throne during half a century. But though the first impression of the crusaders was so unexpected that they made their conquests with great ease, they found infinite difficulty in preserving them. Establishments so distant from Europe, surrounded by warlike nations, animated with fanatical zeal scarcely inferior to that of the crusaders themselves, were per-

i Fulcherius Carnotensis ap. Bongarsii Gesta Dei per Francos, vol. i. 387. edit. Han. 1611.

Alexias, lib. x. ap. Byz. script. vol. xi. p. 224.
[N] Note XIII.

A.D. 1291. Petually in danger of being overturned. Before the expiration of the thirteenth century, the Christians were driven out of all their Asiatic possessions, in acquiring of which incredible numbers of men had perished, and immense sums of money had been wasted. The only common enterprise in which the European nations ever engaged, and which they all undertook with equal ardour, remains a singular monument of human folly.

The beneficial effects of the crusades on manners.

But from these expeditions, extravagant as they were, beneficial consequences followed, which had neither been foreseen nor expected. In their progress towards the Holy Land, the followers of the cross marched through countries better cultivated

and more civilized than their own. Their first rendezvous was commonly in Italy, in which Venice, Genoa, Pisa, and other cities, had begun to apply themselves to commerce, and had made considerable advances towards wealth as well as refinement. They embarked there, and landing in Dalmatia, pursued their route by land to Constantinople. Though the military spirit had been long extinct in the eastern empire, and a despotism of the worst species had annihilated almost every public virtue, yet Constantinople, having never felt the destructive rage of the barbarous nations, was the greatest as well as the most beautiful city in Europe, and the only one in which there remained any image of the ancient elegance in manners and arts. The naval power of the eastern empire was consider-Manufactures of the most curious fabric were carried on in its dominions. Constantinople was the chief mart in Europe for the commodities of the East Indies. Although the Saracens and Turks had torn from the empire many of its richest provinces, and had reduced it within very narrow bounds, yet great wealth flowed into the capital from these various sources, which not only cherished such a taste for magnificence, but kept alive such a relish for the sciences, as

appears considerable, when compared with what was known in other parts of Europe. Even in Asia, the Europeans, who had assumed the cross, found the remains of the knowledge and arts which the example and encouragement of the caliphs had diffused through their empire. Although the attention of the historians of the crusades was fixed on other objects than the state of society and manners among the nations which they invaded, although most of them had neither taste nor discernment enough to describe these, they relate, however, such signal acts of humanity and generosity in the conduct of Saladin, as well as some other leaders of the Mahometans, as give us a very high idea of their It was not possible for the crusaders to travel through so many countries, and to behold their various customs and institutions, without acquiring information and improvement. Their views enlarged; their prejudices wore off; new ideas crowded into their minds; and they must have been sensible, on many occasions, of the rusticity of their own manners, when compared with those of a more polished people. These impressions were not so slight as to be effaced upon their return to their native countries. A close intercourse subsisted between the East and West during two centuries; new armies were continually marching from Europe to Asia, while former adventurers returned home and imported many of the customs to which they had been familiarized by a long residence abroad. Accordingly we discover, soon after the commencement of the crusades, greater splendour in the courts of princes, greater pomp in public ceremonies, a more refined taste in pleasure and amusements, together with a more romantic spirit of enterprise spreading gradually over Europe; and to these wild expeditions, the effect of superstition or folly, we owe the first gleams of light which tended to dispel barbarism and ignorance.

Their influence on the crusades took place slowly; their in-

fluence upon the state of property, and conthe state of sequently of power, in the different kingproperty. doms of Europe, was more immediate as well as discernible. The nobles who assumed the cross, and bound themselves to march to the Holy Land, soon perceived that great sums were necessary towards defraying the expense of such a distant expedition, and enabling them to appear with suitable dignity at the head of their vassals. But the genius of the feudal system was averse to the imposition of extraordinary taxes, and subjects in that age were unaccustomed to pay them. No expedient remained for levying the sums requisite but the sale of their possessions. As men were inflamed with romantic expectations of the splendid conquests which they hoped to make in Asia, and possessed with such zeal for recovering the Holy Land as swallowed up every other passion, they relinquished their ancient inheritances without any reluctance, and for prices far below their value, that they might sally forth as adventurers in quest of new settlements in unknown countries. The monarchs of the great kingdoms in the West, none of whom had engaged in the first crusade, eagerly seized this opportunity of annexing considerable territories to their crowns at small expense.1 Besides this, several great barons, who perished in the holy war, having left no heirs, their fiefs reverted of course to their respective sovereigns; and by these accessions of property as well as power, taken from the one scale and thrown into the other, the regal authority rose in proportion as that of the aristocracy declined. The abscence, too, of many potent vassals, accustomed to control and give law to their sovereigns, afforded them an opportunity of extending their prerogative, and of acquiring a degree of weight in the constitution which they did not formerly possess. To these circumstances we may add, that as all who assumed the cross were taken under the immediate protection of the church, and its heaviest

<sup>1</sup> Willelm. Malmsbur, Guibert. Abbas ap. Bongars. vol. i. 481.

anathemas were denounced against such as should disquiet or annoy those who had devoted themselves to this service; the private quarrels and hostilities which banished tranquillity from a feudal kingdom, were suspended or extinguished; a more general and steady administration of justice began to be introduced, and some advances were made towards the establishment of regular government in the several kingdoms of Europe.<sup>10</sup> [O]

The commercial effects of the crusades Their were not less considerable than those which commer-I have already mentioned. The first armies cial effect. under the standard of the cross, which Peter the Hermit and Godfrey of Bouillon led through Germany and Hungary to Constantinople, suffered so much by the length of the march, as well as by the fierceness of the barbarous people who inhabited those countries, that it deterred others from taking the same route: and rather than encounter so many dangers, they chose to go by sea. Venice, Genoa, and Pisa, furnished the transports on which they embarked. The sum which these cities received merely for freight from such numerous armies was immense." This, however, was but a small part of what they gained by the expeditions to the Holy Land; the crusaders contracted with them for military stores and provisions; their fleets kept on the coast as the armies advanced by land; and supplying them with whatever was wanting, engrossed all the profits of a branch of commerce which, in every age, has been extremely lucrative. The success which attended the arms of the crusaders was productive of advantages still more permanent. There are charters yet extant, containing grants to the Venetians, Pisans, and Genoese, of the most extensive immunities in the several settlements which the Christians made in Asia. the commodities which they imported or exported are

m Du Cange Glossar. voc. Cruce signatus. Guil. Abbas ap. Bongars. vol. i. 480. 482. [O] Note XIV.

n Muratori Antiquit. Italic. medii Ævi, vol. ii. 905.

thereby exempted from every imposition; the property of entire suburbs in some of the maritime towns, and of large streets in others, is vested in them; and all questions, arising among persons settled within their precincts, or who traded under their protection, are appointed to be tried by their own laws, and by judges of their own appointment.º When the crusaders seized Constantinople, and placed one of their own leaders on the imperial throne, the Italian States were likewise gainers by that event. The Venetians, who had planned the enterprise, and took a considerable part in carrying it into execution, did not neglect to secure to themselves the chief advantages redounding from its success. They made themselves masters of part of the ancient Peloponnesus in Greece, together with some of the most fertile islands in the Archipelago. Many valuable branches of the commerce, which formerly centred in Constantinople, were transferred to Venice, Genoa, or Thus a succession of events, occasioned by the Holy War, opened various sources, from which wealth flowed in such abundance into these cities, p as enabled them, in concurrence with another institution, which shall be immediately mentioned, to secure their own liberty and independence.

The establishment of communities favourable to government and order. II. The institution to which I alluded was the forming of cities into communities, corporations, or bodies politic, and granting them the privilege of municipal jurisdiction, which contributed more, perhaps, than any other cause, to introduce regular government, police, and arts, and to diffuse them over Europe. The feudal government had

degenerated into a system of oppression. The usurpations of the nobles were become unbounded and intolerable; they had reduced the great body of the people into a state of actual servitude; the condition of those

o Muratori Antiquit. Italic. medii Ævi, vol. ii. 906. &c.

P Villehardouin Hist. de Constant, sous l'Empereurs François, 105, &c.

dignified with the name of freemen, was often little preferable to that of the other. Nor was such oppression the portion of those alone who dwelt in the country,

The ancient state of cities.

and were employed in cultivating the estate of their master. Cities and villages found it necessary to hold of some great lord, on whom they might depend for protection, and

became no less subject to his arbitrary jurisdiction. The inhabitants were deprived of those rights which, in social life, are deemed most natural and inalienable. They could not dispose of the effects which their own industry had acquired, either by a latter will, or by any deed executed during their life. They had no right to appoint guardians for their children during their minority. They were not permitted to marry without purchasing the consent of the lord on whom they depended. If once they had commenced a lawsuit, they durst not terminate it by an accommodation, because that would have deprived the lord, in whose court they pleaded, of the perquisites due to him on passing sentence. Services of various kinds, no less disgraceful than oppressive, were exacted from them without mercy or moderation. The spirit of industry was checked in some cities by absurd regulations, and in others by unreasonable exactions; nor would the narrow and oppressive maxims of a military aristocracy have permitted it ever to rise to any degree of height or vigour.

The freedom of cities first established in Italy. But as soon as the cities of Italy began to turn their attention towards commerce, and to conceive some idea of the advantages which they might derive from it, they became impatient to shake off the yoke of their insolent lords, and to establish among them-

<sup>9</sup> Dacherii. Spiceleg. tom. xi. 374, 375. edit. in 4to. Ordonances des Rois de France, tom. iii. 204. No. 2. 6.

r Ordonances des Rois de France, tom. i. p. 22. tom. iii. 203. No. 1. Murat. Antiquit. Ital. vol. iv. p. 20. Dacher. Spicel. vol. xi. 325. 341.

Dacher. Spicel. vol. ix. 182.

t M. l'Abbé Mably Observat. sur l'Hist. de France, tom. ii. p. 2. 96.

selves such a free and equal government, as would render property secure, and industry flourishing. The German emperors, especially those of the Franconian and Suabian lines, as the seat of their government was far distant from Italy, possessed a feeble-and imperfect iurisdiction in that country. Their perpetual quarrels, either with the popes or with their own turbulent vassals, diverted their attention from the interior police of Italy, and gave constant employment to their arms. These circumstances encouraged the inhabitants of some of the Italian cities, towards the beginning of the eleventh century, to assume new privileges, to unite together more closely, and to form themselves into bodies politic under the government of laws established by common consent." The rights which many cities acquired by bold or fortunate usurpations, others purchased from the emperors, who deemed themselves gainers when they received large sums for immunities which they were no longer able to withhold; and some cities obtained them gratuitously, from the generosity or facility of the princes on whom they depended. The great increase of wealth, which the crusades brought into Italy, occasioned a new kind of fermentation and activity in the minds of the people, and excited such a general passion for liberty and independence, that, before the conclusion of the last crusade, all the considerable cities in that country had either purchased or had extorted large immunities from the emperors. [P]

Is introduced into France and into other countries of Europe. A. D. 1108 -1137.

This innovation was not long known in Italy before it made its way into France. Louis le Gros, in order to create some power that might counterbalance those potent vassals who controlled or gave law to the crown, first adopted the plan of conferring new privileges on the towns situated within its own domain. These privileges were called charters of community, by which he enfranchised

u Murat. Antiquit. Ital. vol. iv. p. 5.

[P] Note XV.

the inhabitants, abolished all marks of servitude, and formed them into corporations or bodies politic, to be governed by a council and magistrates of their own nomination. These magistrates had the right of administering justice within their own precincts, of levying taxes, of embodying and training to arms the militia of the town, which took the field when required by the sovereign, under the command of officers appointed by the community. The great barons imitated the example of their monarch, and granted like immunities to the towns within their territories. They had wasted such great sums in their expeditions to the Holy Land. that they were eager to lay hold on this new expedient for raising money, by the sale of those charters of li-Though the institution of communities was as repugnant to their maxims of policy, as it was adverse to their power, they disregarded remote consequences. in order to obtain present relief. In less than two centuries, servitude was abolished in most of the towns in France, and they became free corporations, instead of dependant villages, without jurisdiction or privileges. [Q] Much about the same period, the great cities in Germany began to acquire like immunities, and laid the foundation of their present liberty and independence. [R] The practice spread quickly over Europe, and was adopted in Spain, England, Scotland, and all the other feudal kingdoms. [S]

The good effects of this new institution Its happy were immediately felt, and its influence on effects upgovernment as well as manners was no less on the conextensive than salutary. A great body of dition of the inhabithe people was released from servitude, and tants; from all the arbitrary and grievous impositions to which that wretched condition had subjected them. Towns, upon acquiring the right of community, became so many little republics, governed by known and equal laws. Liberty was deemed such an essential and characteristic part in their constitution, that if any

slave took refuge in one of them, and resided there during a year without being claimed, he was instantly declared a freeman, and admitted as a member of the community.w

Upon the power of the nobility;

As one part of the people owed their liberty to the erection of communities, another was indebted to them for their security. Such had been the state of Europe during several centuries, that self-preservation obliged

every man to court the patronage of some powerful baron, and in times of danger his castle was the place to which all resorted for safety. But towns surrounded with walls, whose inhabitants were regularly trained to arms, and bound by interest, as well as by the most solemn engagements, reciprocally to defend each other, afforded a more commodious and secure retreat. nobles began to be considered as of less importance when they ceased to be the sole guardians to whom the people could look up for protection against violence.

Upon the power of

If the nobility suffered some diminution of their credit and power by the privileges granted to the cities, the crown acquired an the crown. increase of both. As there were no regular troops kept on foot in any of the feudal kingdoms, the monarch could bring no army into the field, but what was composed of soldiers furnished by the crown vassals, always jealous of the regal authority; nor had he any funds for carrying on the public service but such as they granted him with a very sparing hand. But when the members of communities were permitted to bear arms, and were trained to the use of them, this in some degree supplied the first defect, and gave the crown the command of a body of men, independent of its great vassals. The attachment of the cities to their sovereigns, whom they respected as the first authors of their liberties, and whom they were obliged to

w Statut. Humberti Bellojoci Dacher. Spicel. vol. ix. 182. 185. Charta Comit. Forens. ibid. 193.

court as the protectors of their immunities against the domineering spirit of the nobles, contributed somewhat towards removing the second evil, as, on many occasions, it procured the crown supplies of money, which added new force to government.x

Upon the increase of industry.

The acquisition of liberty made such a happy change in the condition of all the members of communities, as roused them from that inaction into which they had been sunk

by the wretchedness of their former state. of industry revived: commerce became an object of attention, and began to flourish: population increased: independence was established; and wealth flowed into cities which had long been the seat of poverty and oppression. Wealth was accompanied by its usual attendants, ostentation and luxury; and though the former was formal and cumbersome, and the latter inelegant, they led gradually to greater refinement in manners, and in the habits of life. Together with this improvement in manners, a more regular species of government and police was introduced. As cities grew to be more populous, and the occasions of intercourse among men increased, statutes and regulations multiplied of course, and all became sensible that their common safety depended on observing them with exactness, and on punishing such as violated them with promptitude and rigour. Laws and subordination, as well as polished manners, taking their rise in cities, diffused themselves insensibly through the rest of the society.

The inhabitants of cities acquire political power, as members of the constitution.

III. The inhabitants of cities baving obtained personal freedom and municipal jurisdiction, soon acquired civil liberty and political power. It was a fundamental principle in the feudal system of policy, that no freeman could be subjected to new laws or taxes unless by his own consent. In consequence of this, the vassals of every baron were called to his court, in which they established, by

\* Ordon. des Rois de France, tom. i. 602. 785.; tom. ii. 318. 422.

mutual consent, such regulations as they deemed most beneficial to their small society, and granted their superior such supplies of money, as were proportioned to their abilities, or to his wants. The barons themselves, conformably to the same maxim, were admitted into the supreme assembly of the nation, and concurred with the sovereign in enacting laws, or in imposing taxes. As the superior lord, according to the original plan of feudal policy, retained the direct property of those lands which he granted, in temporary possession, to his vassals; the law, even after fiefs became hereditary, still supposed this original practice to subsist. The great council of each nation, whether distinguished by the name of a Parliament, a Diet, the Cortes, or the Statesgeneral, was composed entirely of such barons and dignified ecclesiastics as held immediately of the crown. Towns, whether situated within the royal domain or on the lands of a subject, depended originally for protection on the lord of whom they held. They had no legal name, no political existence, which could entitle them to be admitted into the legislative assembly, or could give them any authority there. But as soon as they were enfranchised, and formed into bodies corporate, they became legal and independent members of the constitution, and acquired all the rights essential to freemen. Amongst these the most valuable was the privilege of a decisive voice in enacting public laws and granting national subsidies. It was natural for cities, accustomed to a form of municipal government, according to which no regulation could be established within the community, and no money could be raised but by their own consent, to claim this privilege. The wealth, the power, and consideration, which they acquired on recovering their liberty, added weight to their claim; and favourable events happened, or fortunate conjunctures occurred, in the different kingdoms of Europe, which facilitated their obtaining possession of this important right. In England, one of the first countries in which the representatives of boroughs were

admitted into the great council of the nation. A.D. 1265. the barons who took arms against Henry III. summoned them to attend parliament, in order to add greater popularity to their party, and to strengthen the barrier against the encroachment of regal power. France, Philip the Fair, a monarch no less sagacious than enterprising, considered them as instruments which might be employed with equal advantage to extend the royal prerogative, to counterbalance the exorbitant power of the nobles, and to facilitate the imposition of new taxes. With these views, he introduced the deputies of such towns as were formed into communities, into the states-general of the nation.y In the empire, the wealth and immunities of the imperial cities placed them on a level with the most considerable members of the Germanic body. Conscious of their own power and dignity, they pretended to A. D. 1293. the privilegeof forming a separate bench in the diet; and made good their pretensions.2

The happy effects of this upon government.

But in what way soever the representatives of cities first gained a place in the legislature, that event had great influence on the form and genius of government. It tempered the

rigour of aristocratical oppression with a proper mixture of popular liberty; it secured to the great body of the people, who had formerly no representatives, active and powerful guardians of their rights and privileges; it established an intermediate power between the king and the nobles, to which each had recourse alternately, and which, at some times, opposed the usurpations of the former, on other occasions checked the encroachments of the latter. As soon as the representatives of communities gained any degree of credit and influence in the legislature, the spirit of laws became different from what it had formerly been; it flowed from new principles; it was directed towards new objects; equality, order, the public good, and the

y Pasquier Recherches de la France, p. 81. edit. Par. 1633.

<sup>&</sup>lt;sup>2</sup> Pfeffel Abregè de l'Histoire and Droit d'Allemagne, p. 408. 451.

redress of grievances, were phrases and ideas brought into use, and which grew to be familiar in the statutes and jurisprudence of the European nations. Almost all the efforts in favour of liberty in every country of Europe have been made by this new power in the legislature. In proportion as it rose to consideration and influence, the severity of the aristocratical spirit decreased; and the privileges of the people became gradually more extensive, as the ancient and exorbitant jurisdiction of the nobles was abridged. [T]

The people declared free by the charters of communities, acquire liberty by enfranchisement.

IV. The inhabitants of towns having been declared free by the charters of communities, that part of the people which resided in the country, and was employed in agriculture, began to recover liberty by enfranchisement.

During the rigour of feudal government, as hath been already observed, the great body of the lower people was reduced to servitude. They were slaves fixed to the soil which they cultivated, and together with it were transferred from one proprietor to another, by sale, or by conveyance. The spirit of feudal policy did not favour the enfranchisement of that order of men. It was an established maxim, that no vassal could legally diminish the value of a fief, to the detriment of the lord from whom he had received it. In consequence of this, manumission by the authority of the immediate master was not valid; and unless it was confirmed by the superior lord of whom he held, slaves belonging to the fief did not acquire a complete right to their liberty. Thus it became necessary to ascend through all the gradations of feudal holding to the king, the lord paramount.<sup>a</sup> A form of procedure so tedious and troublesome, discouraged the practice of manumission. Domestic or personal slaves often obtained liberty from the humanity or beneficence of their masters, to whom they belonged in absolute

<sup>[</sup>T] Note XIX.

<sup>&</sup>lt;sup>2</sup> Etablissemens de St. Louis, liv. ii. ch. 34. Orden. tom. i. 283. note (a)

property. The condition of slaves fixed to the soil was much more unalterable.

But the freedom and independence which one part of the people had obtained by the in-The motives and stitution of communities, inspired the other progress with the most ardent desire of acquiring the of this. same privileges; and their superiors, sensible of the various advantages which they had derived from their former concessions to their dependants, were less unwilling to gratify them by the grant of new immunities. The enfranchisement of slaves became more frequent: and the monarchs of France, prompted by A. D. 1315 necessity no less than by their inclination to and 1318. reduce the power of the nobles, endeavoured to render it general. Louis X. and Philip the Long. issued ordinances, declaring, "That, as all men were by nature free-born, and as their kingdom was called the kingdom of Franks, they determined that it should be so in reality as well as in name; therefore they appointed that enfranchisements should be granted throughout the whole kingdom, upon just and reasonable conditions."b These edicts were carried into immediate execution within the royal domain. The example of their sovereigns, together with the expectation of considerable sums which they might raise by this expedient, led many of the nobles to set their dependants at liberty; and servitude was gradually abolished in almost every province of the kingdom. [U] In Italy, the establishment of republican government in their great cities, the genius and maxims of which were extremely different from those of the feudal policy, together with the ideas of equality, which the progress of commerce had rendered familiar, gradually introduced the practice of enfranchising the ancient predial slaves. In some provinces of Germany, the persons who had been subjected to this species of bondage, were released; in others, the rigour of their state was mitigated. In England, as the spirit of liberty gained

b Ordon. tom. i. p. 583. 653.

ground, the very name and idea of personal servitude, without any formal interposition of the legislature to prohibit it, was totally banished.

The effects of this upon the improvement of society. The effects of such a remarkable change in the condition of so great a part of the people, could not fail of being considerable and extensive. The husbandman, master of his own industry, and secure of reaping for himself the fruits of his labour, became

the farmer of the same fields where he had formerly been compelled to toil for the benefit of another. The odious names of master and of slave, the most mortifying and depressing of all distinctions to human nature, were abolished. New prospects opened, and new incitements to ingenuity and enterprise presented themselves to those who were emancipated. The expectation of bettering their fortune, as well as that of raising themselves to a more honourable condition, concurred in calling forth their activity and genius; and a numerous class of men, who formerly had no political existence, and were employed merely as instruments of labour, became useful citizens, and contributed towards augmenting the force or riches of the society which adopted them as members.

The introduction of a more regular administration of justice, contributes to the improvement of society. V. The various expedients which were employed in order to introduce a more regular, equal, and vigorous administration of justice, contributed greatly towards the improvement of society. What were the particular modes of dispensing justice, in their several countries, among the various barbarous nations which overran the Roman empire, and took possession of its different provinces, cannot now be determined with

certainty. We may conclude, from the form of government established among them, as well as from their ideas concerning the nature of society, that the authority of the magistrate was extremely limited, and the independence of individuals proportionally great. His-

tory and records, as far as these reach back, justify this conclusion, and represent the ideas and exercise of justice in all the countries of Europe as little different from those which must take place in the most simple state of civil life. To maintain the order and tranquillity of society by the regular execution of known laws; to inflict vengeance on crimes destructive of the peace and safety of individuals, by a prosecution carried on in the name and by the authority of the community; to consider the punishment of criminals as a public example to deter others from violating the laws; were objects of government little understood in theory, and less regarded in practice. The magistrate could hardly be said to hold the sword of justice; it was left in the hands of private persons. Resentment was almost the sole motive for prosecuting crimes; and to gratify that passion, was considered as the chief end in punishing them. He who suffered the wrong, was the only person who had a right to pursue the aggressor, and to exact or to remit the punishment. From a system of judicial procedure, so crude and defective, that it seems to be scarcely compatible with the subsistence of civil society, disorder and anarchy flowed. Superstition concurred with this ignorance concerning the nature of government, in obstructing the administration of justice, or in rendering it capricious and unequal. To provide remedies for these evils, so as to give a more regular course to justice, was, during several centuries, one great object of political wisdom. The regulations for this purpose may be reduced to three general heads: to explain these, and to point out the manner in which they operated, is an important article in the history of society among the nations of Europe.

This effected by abolishing the practice of private war. 1. The first considerable step towards establishing an equal administration of justice, was the abolishment of the right which individuals claimed of waging war with each other, in their own name, and by their own authority. To repel injuries, and to revenge

wrongs, is no less natural to man, than to cultivate friendship; and while society remains in its most simple state, the former is considered as a personal right no less unalienable than the latter. Nor do men in this situation deem that they have a title to redress their own wrongs alone; they are touched with

the injuries done to those with whom they are connected, or in whose honour they are interested, and are no less prompt to avenge them. The savage, how imperfectly soever he may comprehend the principles of political union, feels warmly the sentiments of social affection, and the obligations arising from the ties of blood. On the appearance of an injury or affront offered to his family or tribe, he kindles into rage, and pursues the authors of it with the keenest resentment. He considers it as cowardly to expect redress from any arm but his own, and as infamous to give up to another the right of determining what reparation he should accept, or with what vengeance he should rest satisfied.

The maxims and practice of all uncivilized These lead nations, with respect to the prosecution and to the pracpunishment of offenders, particularly those tice of priof the ancient Germans, and other barbarians vate war. who invaded the Roman empire, are perfectly conformable to those ideas.c While they retained their native simplicity of manners, and continued to be divided into small tribes or societies, the defects in this imperfect system of criminal jurisprudence (if it merits that name) were less sensibly felt. When they came to settle in the extensive provinces which they had conquered, and to form themselves into great monarchies; when new objects of ambition presenting themselves, increased both the number and the violence of their dissensions, they ought to have adopted new maxims concerning the redress of injuries, and to have regulated, by general and equal laws, that which they

<sup>&</sup>lt;sup>c</sup> Tacit. de Mor. German. cap. 21. Vell. Paterc. lib. ii. c. 118.

formerly left to be directed by the caprice of private passion. But fierce and haughty chieftains, accustomed to avenge themselves on such as had injured them, did not think of relinquishing a right which they considered as a privilege of their order, and a mark of their independence. Laws enforced by the authority of princes and magistrates, who possessed little power, commanded no great degree of reverence. The administration of justice among rude illiterate people, was not so accurate, or decisive, or uniform, as to induce men to submit implicitly to its determinations. Every offended baron buckled on his armour, and sought redress at the head of his vassals. His adversary met him in like hostile array. Neither of them appealed to impotent laws, which could afford them no protec-Neither of them would submit points, in which their honour and their passions were warmly interested, to the slow determination of a judicial inquiry. Both trusted to their swords for the decision of the contest. The kindred and dependants of the aggressor, as well as of the defender, were involved in the quarrel. They had not even the liberty of remaining neutral. Such as refused to act in concert with the party to which they belonged, were not only exposed to infamy, but subjected to legal penalties.

The different kingdoms of Europe were torn and afflicted, during several centuries, by intestine wars, excited by private animosities, and carried on with all the rage natural to men of fierce manners, and of violent passions. The estate of every baron was a kind of independent territory, disjoined from those around it, and the hostilities between them seldom ceased. The evil became so inveterate and deep-rooted, that the form and laws of private war were ascertained, and regulations concerning it made a part in the system of jurisprudence, in the same manner as if this practice had been founded

d Beaumanoir Coustumes de Beauvoisis, ch. 59. et les notes de Thaumassiere, p. 447.

in some natural right of humanity, or in the original constitution of civil society.

Various methods employed in order to abolish it. So great was the disorder, and such the calamities, which these perpetual hostilities occasioned, that various efforts were made to wrest from the nobles this pernicious privilege. It was the interest of every sovereign to abolish a practice which almost an-

nihilated his authority. Charlemagne prohibited it by an express law, as an invention of the devil to destroy the order and happiness of society; but the reign of one monarch, however vigorous and active, was too short to extirpate a custom so firmly established. Instead of enforcing this prohibition, his feeble successors durst venture on nothing more than to apply palliatives. They declared it unlawful for any person to commence war, until he had sent a formal defiance to the kindred and dependents of his adversary; they ordained, that after the commission of the trespass or crime which gave rise to a private war, forty days must elapse before the person injured should attack the vassals of his adversary; they enjoined all persons to suspend their private animosities, and to cease from hostilities, when the king was engaged in any war against the enemies of the The church co-operated with the civil magistrate, and interposed its authority in order to extirpate a practice so repugnant to the spirit of Christianity. Various councils issued decrees, prohibiting all private wars; and denounced the heaviest anathemas against such as should disturb the tranquillity of society, by claiming or exercising that barbarous right. The aid of religion was called in to combat and subdue the ferocity of the times. The Almighty was said to have manifested, by visions and revelations to different persons, his disapprobation of that spirit of revenge which armed one part of his creatures against the other. Men were required, in the name of God, to sheathe their swords, and to remember the sacred ties which united

e Capitul. A. D. 801. Edit. Baluz. vol. i. p. 371.

them as Christians, and as members of the same so-But this junction of civil and ecclesiastic authority, though strengthened by every thing most apt to alarm and to overawe the credulous spirit of those ages, produced no other effect than some temporary suspensions of hostilities, and a cessation from war on certain days and seasons consecrated to the more solemn acts of devotion. The nobles continued to assert this dangerous privilege; they refused to obey some of the laws calculated to annul or circumscribe it; they eluded others; they petitioned; they remonstrated; they struggled for the right of private war, as the highest and most honourable distinction of their order. Even so late as the fourteenth century, we find the nobles, in several provinces of France, contending for their ancient method of terminating their differences by the sword, in preference to that of submitting them to the decision of any judge. The final abolition of this practice in that kingdom, and the other countries in which it prevailed, is not to be ascribed so much to the force of statutes and decrees, as to the gradual increase of the royal authority, and to the imperceptible progress of juster sentiments concerning government, order, and public security. [X]

The prohibition of trial by judicial combat, another improvement in the administration of justice.

2. The prohibition of the form of trial by judicial combat, was another considerable step towards the introduction of such regular government, as secured public order and private tranquillity. As the right of private war left many of the quarrels among individuals to be decided, like those between nations, by arms; the form of trial by judicial combat, which was established in every country of Europe, banished equity from

courts of justice, and rendered chance or force the arbiter of their determinations. In civilized nations, all Defects in transactions of any importance are concluded the judicial in writing. The exhibition of the deed or in-

proceedstrument is full evidence of the fact, and asings of the certains with precision what each party has middle ages. stipulated to perform. But among a rude people, when the arts of reading and writing were such uncommon attainments, that to be master of either entitled a person to the appellation of a clerk or learned man, scarcely any thing was committed to writing but treaties between princes, their grants and charters to their subjects, or such transactions between private parties as were of extraordinary consequence, or had an extensive effect. The greater part of affairs in common life and business was carried on by verbal contracts or promises. This, in many civil questions, not only made it difficult to bring proof sufficient to establish any claim, but encouraged falsehood and fraud, by rendering them extremely easy. Even in criminal cases, where a particular fact must be ascertained, or an accusation must be disproved, the nature and effect of legal evidence were little understood by barbarous nations. To define with accuracy that species of evidence which a court had reason to expect; to determine when it ought to insist on positive proof, and when it should be satisfied with a proof from circumstances; to compare the testimony of discordant witnesses, and to fix the degree of credit due to each; were discussions too intricate and subtile for the jurisprudence of ignorant ages. In order to avoid encumbering themselves with these, a more simple form of procedure was introduced into courts, as well civil as criminal. In all cases where the notoriety of the fact did not furnish the clearest and most direct evidence, the person accused, or he against whom an action was brought, was called legally, or offered voluntarily, to purge himself by oath; and upon his declaring his innocence, he was instantly acquitted. This absurd practice effectually screened guilt and fraud from detection and punishment, by rendering the temptation

f Leg. Burgund, tit. 8. & 45. Leg. Aleman, tit. 89. Leg. Baiwar, tit. 8. § 5. 2, &c.

to perjury so powerful, that it was not easy to resist it. The pernicious effects of it were sensibly felt; and in order to guard against them, the laws ordained, that oaths should be administered with great solemnity, and accompanied with every circumstance which could inspire religious reverence or superstitious terror. This, however, proved a feeble remedy: these ceremonious rites became familiar, and their impression on the imagination gradually diminished; men who could venture to disregard truth, were not apt to startle at the solemnities of an oath. Their observation of this, put legislators upon devising a new expedient for rendering the purgation by oath more certain and satisfactory. They required the person accused to appear with a certain number of freemen, his neighbours or relations, who corroborated the oath which he took, by swearing that they believed all that he had uttered to be true. These were called compurgators, and their number varied according to the importance of the subject in dispute, or the nature of the crime with which a person was charged. In some cases, the concurrence of no less than three hundred of these auxiliary witnesses was requisite to acquit the person accused. But even this device was found to be ineffectual. It was a point of honour with every man in Europe, during several ages, not to desert the chief on whom he depended, and to stand by those with whom the ties of blood connected him. Whoever then was bold enough to violate the laws, was sure of devoted adherents, willing to abet and eager to serve him in whatever manner he required. The formality of calling compurgators proved an apparent, not a real, security against falsehood and perjury; and the sentences of courts, while they continued to refer every point in question to the oath of the defendant, became so flagrantly iniquitous, as excited

g Du Cange Glossar. vog. Juramerium, vol. iii. p. 1607. Edict. Benedict.

h Du Cange, ibid. vol. iii. p. 1599.

Spelman Glossar. voc. Assath. Gregor. Turon. Hist. lib. viii. c. 9.

universal indignation against this method of procedure.k

These introduced the practice of appealing to Heaven; Sensible of these defects, but strangers to the manner of correcting them, or of introducing a more proper form, our ancestors, as an infallible method of discovering truth, and of guarding against deception, appealed to Heaven, and referred every point in dis-

pute to be determined, as they imagined, by the decision of unerring wisdom and impartial justice. The person accused, in order to prove his innocence, submitted to trial, in certain cases, either by plunging his arm in boiling water; or by lifting a red-hot iron with his naked hand; or by walking barefoot over burning ploughshares; or by other experiments equally pe-

rilous and formidable. On other occasions, he challenged his accuser to fight him in single combat. All these various forms of trial were conducted with many devout ceremonies; the ministers of religion were employed, the Al-

mighty was called upon to interpose for the manifestation of guilt, and for the protection of innocence; and whoever escaped unhurt, or came off victorious, was pronounced to be acquitted by the judgment of God.<sup>1</sup>

The introduction of this practice favoured by the superstition of the middle ages; Among all the whimsical and absurd institutions which owe their existence to the weakness of human reason, this, which submitted questions that affected the property, the reputation, and the lives of men, to the determination of chance, or of bodily strength and address, appears to be the most extravagant and preposterous. There were cir-

cumstances, however, which led the nations of Europe to consider this equivocal mode of deciding any point in contest, as a direct appeal to Heaven, and a certain method of discovering its will. As men are unable to comprehend the manner in which the Almighty carries

k Leg. Langobard. lib. ii. tit. 55. § 34. Murat. Dissertatio de Judiciis Dei. Antiquit. Ital. vol. iii. p. 612.

on the government of the universe, by equal, fixed. and general laws, they are apt to imagine, that in every case which their passions or interest render important in their own eyes, the Supreme Ruler of all ought visibly to display his power in vindicating innocence and punishing guilt. It requires no inconsiderable degree of science and philosophy to correct this popular error. But the sentiments prevalent in Europe during the dark ages, instead of correcting, strengthened it. Religion. for several centuries, consisted chiefly in believing the legendary history of those saints whose names crowd and disgrace the Romish calendar. The fabulous tales concerning their miracles had been declared authentic by the bulls of popes and the decrees of councils; they made the great subject of the instructions which the clergy offered to the people, and were received by them with implicit credulity and admiration. By attending to these, men were accustomed to believe that the established laws of nature might be violated on the most frivolous occasions, and were taught to look rather for particular and extraordinary acts of power under the divine administration, than to contemplate the regular progress and execution of a general plan. One superstition prepared the way for another; and whoever believed that the Supreme Being had interposed miraculously on those trivial occasions mentioned in legends, could not but expect his intervention in matters of greater importance, when solemnly referred to his decision.

And likewise by their martial spirit. With this superstitious opinion, the martial spirit of Europe, during the middle ages, concurred in establishing the mode of trial by judicial combat. To be ready to maintain with his sword whatever his lips had uttered,

was the first maxim of honour with every gentleman. To assert their own rights by force of arms, to inflict vengeance on those who had injured or affronted them, were the distinction and pride of high-spirited nobles. The form of trial by combat coinciding with this maxim,

flattered and gratified these passions. Every man was the guardian of his own honour, and of his own life; the justice of his cause, as well as his future reputation, depended on his own courage and prowess. This mode of decision was considered, accordingly, as one of the happiest efforts of wise policy; and as soon as it was introduced, all the forms of trial by fire or water, and other superstitious experiments, fell into disuse, or were employed only in controversies between persons of inferior rank. As it was the privilege of a gentleman to claim the trial by combat, it was quickly authorized over all Europe, and received in every country with equal satisfaction. Not only questions concerning uncertain or contested facts, but general and abstract points in law, were determined by the issue of a combat; and the latter was deemed a method of discovering truth more liberal, as well as more satisfactory, than that by investigation and argument. Not only might parties, whose minds were exasperated by the eagerness and the hostility of opposition, defy their antagonist, and require him to make good his charge, or to prove his innocence, with his sword; but witnesses, who had no interest in the issue of the question, though called to declare the truth by laws which ought to have afforded them protection, were equally exposed to the danger of a challenge, and equally bound to assert the veracity of their evidence by dint of arms. To complete the absurdities of this military jurisprudence, even the character of a judge was not sacred from its violence. Any one of the parties might interrupt a judge when about to deliver his opinion; might accuse him of iniquity and corruption in the most reproachful terms, and throwing down his gauntlet, might challenge him to defend his integrity in the field; nor could he, without infamy, refuse to accept the defiance, or decline to enter the lists against such an adversaty.

Thus the form of trial by combat, like other abuses, spread gradually, and extended to all persons, and almost to all cases.

Ecclesiastics, women, minors, superannuated and infirm persons, who could not with decency or justice be compelled to take arms, or to maintain their own cause, were obliged to produce champions, who offered from affection, or were engaged by rewards, to fight their battles. The solemnities of a judicial combat were such as were natural in an action which was considered both as a formal appeal to God, and as the final decision of questions of the highest moment. Every circumstance relating to them was regulated by the edicts of princes, and explained in the comments of lawyers, with a minute and even superstitious accuracy. Skill in these laws and rights was frequently the only science of which warlike nobles boasted, or which they were ambitious to attain.<sup>m</sup>

The pernicious effects of it. By this barbarous custom, the natural course of proceeding, both in civil and criminal questions, was entirely perverted. Force usurped the place of equity in courts of judica-

ture, and justice was banished from her proper mansion. Discernment, learning, integrity, were qualities less necessary to a judge, than bodily strength and dexterity in the use of arms. Daring courage, and superior vigour or address, were of more moment towards securing the favourable issue of a suit, than the equity of a cause, or the clearness of the evidence. Men, of course, applied themselves to cultivate the talents which they found to be of greatest utility. As strength of body and address in arms were no less requisite in those lists which they were obliged to enter in defence of their private rights than in the field of battle, where they met the enemies of their country, it became the great object of education, as well as the chief employment of life, to acquire these martial accomplishments. administration of justice, instead of accustoming men to listen to the voice of equity, or to reverence the deci-

<sup>&</sup>lt;sup>m</sup> See a curious discourse concerning the laws of judicial combat, by Thomas of Woodstock, Duke of Gloucester, uncle to Richard II. in Spelman's Glossar. voc. Campus.

sions of law, added to the ferocity of their manners, and taught them to consider force as the great arbiter of right and wrong.

Various expedients for abolishing this practice. These pernicious effects of the trial by combat were so obvious, that they did not altogether escape the view of the unobserving age in which it was introduced. The clergy, from the beginning, remonstrated against it as repugnant to the spirit of Chris-

tianity, and subversive of justice and order." But the maxims and passions which favoured it, had taken such hold of the minds of men, that they disregarded admonitions and censures, which, on other occasions, would have struck them with terror. The evil was too great and inveterate to yield to that remedy, and continuing to increase, the civil power at length found it necessary to interpose. Conscious, however, of their own limited authority, monarchs proceeded with caution, and their first attempts to restrain, or to set any bounds to this practice were extremely feeble. One of the earliest restrictions of this practice which occurs in the history of Europe, is that of Henry I. of England. It extended no farther than to prohibit the trial by combat in questions concerning property of small value. Louis VII. of France imitated his example, and issued an edict to the same effect. P St. Louis, whose ideas as a legislator were far superior to those of his age, endeavoured to introduce a more perfect jurisprudence, and to substitute the trial by evidence in place of that by combat. But his regulations, with respect to this, were confined to his own domains; for the great vassals of the crown possessed such independent authority, and were so fondly attached to the ancient practice, that he had not power to venture to extend it to the whole kingdom. Some barons voluntarily adopted his regulations. The spirit of courts of justice became averse to the mode of decision by

<sup>&</sup>lt;sup>n</sup> Du Cange Glossar. voc. Duellum, vol. ii. p. 1675.

o Brussel Usage des Fiefs, vol. ii. p. 962.

P Ordon. tom. i. p. 16.

combat, and discouraged it on every occasion. The nobles, nevertheless, thought it so honourable to depend for the security of their lives and fortunes on their own courage alone, and contended with so much vehemence for the preservation of this favourite privilege of their order, that the successors of St. Louis, unable to oppose, and afraid of offending, such powerful subjects, were obliged not only to tolerate, but to authorize the practice which he had attempted to abolish.q other countries of Europe, efforts equally zealous were employed to maintain the established custom; and similar concessions were extorted from their respective sovereigns. It continued, however, to be an object of policy with every monarch of abilities or vigour, to explode the trial by combat; and various edicts were issued for this purpose. But the observation which was made concerning the right of private war, is equally applicable to the mode of trial under review. No custom, how absurd soever it may be, if it has subsisted long, or derives its source from the manners and prejudices of the age in which it prevails, was ever abolished by the bare promulgation of laws and statutes. The sentiments of the people must change, or some new power, sufficient to counteract the prevalent custom, Such a change accordingly took must be introduced. place in Europe, as science gradually increased, and society advanced towards more perfect order. In proportion as the prerogative of princes extended, and came to acquire new force, a power, interested in suppressing every practice favourable to the independence of the nobles, was introduced. The struggle, nevertheless, subsisted for several centuries; sometimes the new regulations and ideas seemed to gain ground; sometimes ancient habits recurred: and though, upon the whole, the trial by combat went more and more into disuse, yet instances of it occur, as late as the sixteenth century, in the history both of France and of England. In proportion as it declined, the regular administration

<sup>9</sup> Ordon. tom. i. p. 328, 390, 435.

of justice was restored, the proceedings of courts were directed by known laws, the study of these became an object of attention to judges, and the people of Europe advanced fast towards civility, when this great cause of the ferocity of their manners was removed. [Y]

The privilege of appealing from the courts of the barons, another great improvement in the administration of justice. 3. By authorizing the right of appeal from the courts of the baron to those of the king, and subjecting the decisions of the former to the review of the latter, a new step, not less considerable than those which I have already mentioned, was taken towards establishing the regular, consistent, and vigorous administration of justice. Among all the encroachments of the feudal nobles on the prerogative of their monarchs, their usurping the administration of justice with supreme authority, both in civil and criminal causes,

within the precincts of their own estates, was the most singular. In other nations, subjects have contended with their sovereigns, and have endeavoured to extend their own power and privileges; but in the history of their struggles and pretensions we discover nothing

Origin of the supreme and independent jurisdiction of the nobility. similar to this right which the feudal barons claimed and obtained. It must have been something peculiar in their genius and manners that suggested this idea, and prompted them to insist on such a claim. Among the rude people who conquered the various provinces of the Roman empire, and established new kingdoms there, the passion of resent-

ment, too impetuous to bear control, was permitted to remain almost unrestrained by the authority of laws. The person offended, as has been observed, retained not only the right of prosecuting, but of punishing his adversary. To him it belonged to inflict such vengeance as satiated his rage, or to accept of such satisfaction as appeased it. But while fierce barbarians continued to be the sole judges in their own cause, their enmities

were implacable and immortal; they set no bounds either to the degree of their vengeance, or to the duration of their resentment. The excesses which this occasioned, proved so destructive of peace and order in society, as to render it necessary to devise some remedy. At first, recourse was had to arbitrators, who by persuasion or entreaty prevailed on the party offended to accept of a fine or composition from the aggressor, and to drop all farther prosecution. But as submission to persons who had no legal or magisterial authority was altogether voluntary, it became necessary to establish judges, with power sufficient to enforce their own decisions. The leader whom they were accustomed to follow and to obey, whose courage they respected, and in whose integrity they placed confidence, was the person to whom a martial people naturally committed this important prerogative. Every chieftain was the commander of his tribe in war, and their judge in peace. Every baron led his vassals to the field, and administered justice to them in his hall. The high-spirited dependants would not have recognised any other authority, or have submitted to any other jurisdiction. But in times of turbulence and violence, the exercise of this new function was attended, not only with trouble, but with danger. No person could assume the character of a judge, if he did not possess power sufficient to protect the one party from the violence of private revenge, and to compel the other to accept of such reparation as he enjoined. In consideration of the extraordinary efforts which this office required, judges, besides the fine which they appointed to be paid as a compensation to the person or family who had been injured, levied an additional sum as a recompense for their own labour; and in all the feudal kingdoms the latter was not only as precisely ascertained, but as regularly exacted, as the former.

The extent and Thus, by the natural operation of circumstances peculiar to the manners or political state of the feudal nations, separate and

bad effects of this privilege.

territorial jurisdictions came not only to be established in every kingdom, but were established in such a way, that the interest of the

barons concurred with their ambition in maintaining and extending them. It was not merely a point of honour with the feudal nobles to dispense justice to their vassals: but from the exercise of that power arose one capital branch of their revenue; and the emoluments of their courts were frequently the main support of their dignity. It was with infinite zeal that they asserted and defended this high privilege of their order. this institution, however, every kingdom in Europe was split into as many separate principalities as it contained powerful barons. Their vassals, whether in peace or in war, were hardly sensible of any authority, but that of their immediate superior lord. They felt themselves subject to no other command. They were amenable to no other jurisdiction. The ties which linked together these smaller confederacies became close and firm; the bonds of public union relaxed, or were dissolved. The nobles strained their invention in devising regulations which tended to ascertain and perpetuate this distinction. In order to guard against any appearance of subordination in their courts to those of the crown, they frequently constrained their monarchs to prohibit the royal judges from entering their territories, or from claiming any jurisdiction there; and if, either through mistake, or from the spirit of encroachment, any royal judge ventured to extend his authority to the vassals of a baron, they might plead their right of exemption, and the lord of whom they held could not only rescue them out of his hands, but was entitled to legal reparation for the injury and affront offered to him. The jurisdiction of the royal judges scarcely reached beyond the narrow limits of the king's demesnes. Instead of a regular gradation of courts, all acknowledging the authority of the same general laws, and looking up to these as the guides of their decisions, there were in every feudal kingdom a number of independent tribunals,

the proceedings of which were directed by local customs contradictory forms. The collision of jurisdiction among these different courts often retarded the execution of justice. The variety and caprice of their modes of procedure must have for ever kept the administration of it from attaining any degree of uniformity or perfection.

Expedients employed in order to limit or abolish it.

All the monarchs of Europe perceived these encroachments on their jurisdiction, and bore them with impatience. But the usurpations of the nobles were so firmly established, and the danger of endeavouring to overturn them by open force was so mani-

to overturn them by open force was so manifest, that kings were obliged to remain satisfied with attempts to undermine them. Various expedients were employed for this purpose; each of which merit attention, as they mark the progress of law and equity in the several kingdoms of Europe. At first, princes endeavoured to circumscribe the jurisdiction of the barons, by contending that they ought to take cognizance only of smaller offences, reserving those of greater moment, under the appellation of Pleas of the Crown, and Royal Causes, to be tried in the king's courts. This, however, affected only the barons of inferior note: the more powerful nobles scorned such a distinction, and not only claimed unlimited jurisdiction, but obliged their sovereigns to grant them charters, conveying or recognizing this privilege in the most ample form. The attempt, nevertheless, was productive of some good consequences, and paved the way for more. turned the attention of men towards a jurisdiction distinct from that of the baron whose vassals they were: it accustomed them to the pretensions of superiority which the crown claimed over territorial judges; and taught them, when oppressed by their own superior lord, to look up to their sovereign as their protector. This facilitated the introduction of appeals, by which princes brought the decisions of the barons' courts under the review of the royal judges. While trial by

combat subsisted in full vigour, no point decided according to that mode could be brought under the review of another court. It had been referred to the judgment of God; the issue of battle had declared his will; and it would have been impious to have called in question the equity of the divine decision. But as soon as that barbarous custom began to fall into disuse, princes encouraged the vassals of the barons to sue for redress, by appealing to the royal courts. The progress of this practice, however, was slow and gradual. The first instances of appeals were on account of the delay or the refusal of justice in the baron's court; and as these were countenanced by the ideas of subordination in the feudal constitution, the nobles allowed them to be introduced without much opposition. But when these were followed by appeals on account of the justice or iniquity of the sentence, the nobles then began to be sensible, that, if this innovation became general, the shadow of power alone would remain in their hands, and all real authority and jurisdiction would centre in those courts which possessed the right of review. They instantly took the alarm, remonstrated against the encroachment, and contended boldly for their ancient privileges. But the monarchs in the different kingdoms of Europe pursued their plan with steadiness and prudence. Though forced to suspend their operations on some occasions, and seemingly to yield when any formidable confederacy of their vassals united against them, they resumed their measures as soon as they observed the nobles to be remiss or feeble, and pushed them with vigour. They appointed the royal courts, which originally were ambulatory, and irregular with respect to their times of meeting, to be held in a fixed place, and at stated seasons. They were solicitous to name judges of more distinguished abilities than such as usually presided in the courts of the barons. They added dignity to their character, and splendour to their assemblies. They laboured to render their forms regular, and their decrees consistent.

Such judicatories became, of course, the objects of public confidence as well as veneration. The people, relinquishing the tribunals of their lords, were eager to bring every subject of contest under the more equal and discerning eye of those whom their sovereign had chosen to give judgment in his name. Thus kings became once more the heads of the community, and the dispensers of justice to their subjects. The barons, in some kingdoms, ceased to exercise the right of jurisdiction, because it sunk into contempt; in others, it was circumscribed by such regulations as rendered it innocent, or it was entirely abolished by express statutes. Thus the administration of justice, taking its rise from one source, and following one direction, held its course, in every state, with more uniformity, and with greater force. [Z]

The regulations of the canon law promote a more perfect administration. VI. The forms and maxims of the canon law, which were become universally respectable, from their authority in the spiritual courts, contributed not a little towards those improvements in jurisprudence which I have enumerated. If we consider the canon law politically, and view it either as a system framed on purpose to assist the clergy in

usurping powers and jurisdiction no less repugnant to the nature of their function, than inconsistent with the order of government; or, as the chief instrument in establishing the dominion of the popes, which shook the throne, and endangered the liberties of every kingdom in Europe, we must pronounce it one of the most formidable engines ever formed against the happiness of civil society. But if we contemplate it merely as a code of laws respecting the rights and property of individuals, and attend only to the civil effects of its decisions concerning these, it will appear in a different and much more favourable light. In ages of ignorance and credulity, the ministers of religion are the objects of superstitious veneration. When the barbarians who

The progress of ecclesiastical usurpation. overran the Roman empire, first embraced the Christian faith, they found the clergy in possession of considerable power; and they naturally transferred to those new guides the profound submission and reverence which

they were accustomed to yield to the priests of that religion which they had forsaken. They deemed their persons to be equally sacred with their function: and would have considered it as impious to subject them to the profane jurisdiction of the laity. The clergy were not blind to these advantages which the weakness of mankind afforded them. They established courts, in which every question relating to their own character, their function, or their property, was tried. They pleaded and obtained an almost total exemption from the authority of civil judges. Upon different pretexts, and by a multiplicity of artifices, they communicated this privilege to so many persons, and extended their jurisdiction to such a variety of cases. that the greater part of those affairs which gave rise to contest and litigation, was drawn under the cognizance of the spiritual courts.

The plan of ecclesiastical jurisprudence more perfect than that in the civil courts. But, in order to dispose the laity to suffer these usurpations without murmur or opposition, it was necessary to convince them, that the administration of justice would be rendered more perfect by the establishment of this new jurisdiction. This was not a difficult undertaking at that period, when ecclesiastics carried on their encroachments

with the greatest success. That scanty portion of science which served to guide men in the ages of darkness, was almost entirely engrossed by the clergy. They alone were accustomed to read, to inquire, and to reason. Whatever knowledge of ancient jurisprudence had been preserved, either by tradition, or in such books as had escaped the destructive rage of barbarians, was possessed by them. Upon the maxims of that excellent system, they founded a code of laws

consonant to the great principles of equity. Being directed by fixed and known rules, the forms of their courts were ascertained, and their decisions became uniform and consistent. Nor did they want authority sufficient to enforce their sentences. Excommunication, and other ecclesiastical censures, were punishments more formidable than any that civil judges could inflict in support of their decrees.

The good effects of imitating and adopting it.

It is not surprising, then, that ecclesiastical jurisprudence should become such an object of admiration and respect, that exemption from civil jurisdiction was courted as a privilege, and conferred as a reward.

It is not surprising, that, even to a rude people, the maxims of the canon law should appear more equal and just than those of the ill-digested jurisprudence which directed all proceedings in civil courts. According to the latter, the differences between contending barons were terminated, as in a state of nature. by the sword; according to the former, every matter was subjected to the decision of laws. The one, by permitting judicial combats, left chance and force to be arbiters of right or wrong, of truth or falsehood: the other passed judgment with respect to these by the maxims of equity, and the testimony of witnesses. Any error or iniquity in a sentence pronounced by a baron to whom feudal jurisdiction belonged, was irremediable, because originally it was subject to the review of no superior tribunal; the ecclesiastical law established a regular gradation of courts, through all which a cause might be carried by appeal, until it was determined by that authority which was held to be supreme in the church. Thus the genius and principles of the canon law prepared men for approving those three great alterations in the feudal jurisprudence which I have mentioned. But it was not with respect to these points alone that the canon law suggested improvements beneficial to society. Many of the regulations, now deemed the barriers of personal security, or

the safeguards of private property, are contrary to the spirit, and repugnant to the maxims of the civil jurisprudence known in Europe during several centuries, and were borrowed from the rules and practice of the ecclesiastical courts. By observing the wisdom and equity of the decisions in these courts, men began to perceive the necessity either of deserting the martial tribunals of the barons, or of attempting to reform them. [AA]

The revival of the Roman law contributes towards more liberal ideas concerning justice and order.

The cir-

cumstances

from which

the Roman law fell into

oblivion.

VII. The revival of the knowledge and study of the Roman law co-operated with the causes which I have mentioned, in introducing more just and liberal ideas concerning the nature of government, and the administration of justice. Among the calamities which the devastations of the barbarians who broke in upon the empire brought upon mankind, one of the greatest was their overturning the system of Roman jurisprudence, the noblest monument of the wisdom of that great people, formed to subdue and to govern the world. The laws and regulations of a civilized community were repugnant to the manners and ideas of these fierce invaders. They had no respect to objects of which a rude people had no conception; and were adapted to a state of society with which they

were entirely unacquainted. For this reason, wherever they settled, the Roman jurisprudence soon sunk into oblivion, and lay buried for some centuries under the load of those institutions which the inhabitants of Europe dignified with the name of laws. But towards the middle of the twelfth century, a copy of Justinian's Pandects was accidentally discovered in Italy. By that time, the state of society was so far advanced, and the ideas of men so much enlarged and improved by the occurrences of several centuries, during which

Circum-

which fa-

stances

they had continued in political union, that they were struck with admiration of a system which their ances-

tors could not comprehend. Though they had not hitherto attained such a degree of refinement, as to acquire from the ancients a relish for true philosophy or speculative voured the revival of it. science; though they were still insensible,

in a great degree, to the beauty and elegance of classical composition; they were sufficiently qualified to judge with respect to the merit of their system of laws, in which the many points most interesting to mankind were settled with discernment, precision, and equity. All men of letters studied this new science with eagerness; and within a few years after the discovery of the Pandects, professors of civil law were appointed, who taught it publicly in most countries of Europe.

The effects of this upon the ideas of men, and the dispensation of iustice.

model to study and to imitate were immediately perceived. Men, as soon as they were acquainted with fixed and general laws. perceived the advantage of them, and became impatient to ascertain the principles and forms by which judges should regulate their decisions. Such was the ardour with which they carried on an undertaking of so great importance to society, that, before the close of the twelfth century, the feudal law was reduced into a regular system; the code of canon law was enlarged and methodized; and the loose uncertain customs of different provinces or kingdoms were collected and arranged with an order and accuracy acquired from the knowledge of Roman jurisprudence. In some countries of Europe the Ro-

man law was adopted as subsidiary to their own municipal law; and all cases to which the latter did not extend, were decided according to the principles of the former. In others, the maxims as well as forms of Roman jurisprudence, mingled imperceptibly with the

The effects of having such an excellent

laws of the country, and had a powerful, though less sensible influence, in improving and perfecting them. [BB]

From all these arose a distinction in professions. These various improvements in the system of jurisprudence, and administration of justice, occasioned a change in manners, of great importance, and of extensive effect. They gave rise to a distinction of professions, they obliged men to cultivate differences.

sions; they obliged men to cultivate different talents, and to aim at different accomplishments, in order to qualify themselves for the various departments and functions which became necessary in society. Among uncivilized nations there is but one profession honourable, that of arms. All the ingenuity and vigour of the human mind are exerted in acquiring military skill or address. The functions of peace are few and simple; and require no particular course of education or of study, as a preparation for discharging them. This was the state of Europe during several centuries. Every gentleman, born a soldier, scorned any other occupation; he was taught no science but that of war; even his exercises and pastimes were feats of martial prowess. Nor did the judicial character, which persons of noble birth were alone entitled to assume, demand any degree of knowledge beyond that which such untutored soldiers possessed. To recollect a few traditionary customs which time had confirmed, and rendered respectable; to mark out the lists of battle with due formality; to observe the issue of the combat; and to pronounce whether it had been conducted according to the laws of arms; included every thing that a baron, who acted as a judge, found it necessary to understand.

The effect of this on society.

But when the forms of legal proceedings were fixed, when the rules of decision were committed to writing, and collected into a body, law became a science, the knowledge

[BB] Note XXV.

<sup>\*</sup>Dr. Ferguson's Essay on the History of Civil Society, part iv. § 1.

of which required a regular course of study, together with long attention to the practice of courts. and illiterate nobles had neither leisure nor inclination to undertake a task so laborious, as well as so foreign from all the occupations which they deemed entertaining, or suitable to their rank. They gradually relinquished their places in courts of justice, where their ignorance exposed them to contempt. They became weary of attending to the discussion of cases, which grew too intricate for them to comprehend. Not only the judicial determination of points which were the subject of controversy, but the conduct of all legal business and transactions, was committed to persons trained by previous study and application to the knowledge of law. An order of men, to whom their fellowcitizens had daily recourse for advice, and to whom they looked up for decision in their most important concerns, naturally acquired consideration and influence in society. They were advanced to honours which had been considered hitherto as the peculiar rewards of military virtue. They were intrusted with offices of the highest dignity and most extensive power. Thus, another profession than that of arms came to be introduced among the laity, and was reputed honourable. The functions of civil life were attended to. The talents requisite for discharging them were cultivated. A new road was opened to wealth and eminence. The arts and virtues of peace were placed in their proper rank, and received their due recompense. [CC]

The spirit of chivalry introduces more Tiberal sentiments, and more generous manners.

VIII. While improvements, so important with respect to the state of society and the administration of justice, gradually made progress in Europe, sentiments more liberal and generous had begun to animate the nobles. These were inspired by the spirit of chivalry, which, though considered, commonly, as r wild irstitution, the effect of caprice, and the source of extravagance,

chivalry.

arose naturally from the state of society at Origin of that period, and had a very serious influence in refining the manners of the European nations. The feudal state was a state of almost perpetual war, rapine, and anarchy; during which the weak and unarmed were exposed to insults or in-The power of the sovereign was too limited to prevent these wrongs; and the administration of justice too feeble to redress them. The most effectual protection against violence and oppression, was often found to be that which the valour and generosity of private persons afforded. The same spirit of enterprise which had prompted so many gentlemen to take arms in defence of the oppressed pilgrims in Palestine. incited others to declare themselves the patrons and avengers of injured innocence at home. When the final reduction of the Holy Land under the dominion of infidels put an end to these foreign expeditions, the latter was the only employment left for the activity and courage of adventurers. To check the insolence of overgrown oppressors; to rescue the helpless from captivity; to protect, or to avenge women, orphans, and ecclesiastics, who could not bear arms in their own defence; to redress wrongs, and to remove grievances: were deemed acts of the highest prowess and merit. Valour, humanity, courtesy, justice, honour, were the characteristic qualities of chivalry. To these were added religion, which mingled itself with every passion and institution during the middle ages, and by infusing a large proportion of enthusiastic zeal, gave them such force as carried them to romantic excess. Men were trained to knighthood by a long previous discipline; they were admitted into the order by solemnities no less devout than pompous; every person of noble birth courted that honour: it was deemed a distinction superior to royalty; and monarchs were proud to receive it from the hands of private gentlemen.

This singular institution, in which valour, Its beneficial effects. gallantry, and religion, were so strangely

blended, was wonderfully adapted to the taste and genius of martial nobles; and its effects were soon visible in their manners. War was carried on with less ferocity, when humanity came to be deemed the ornament of knighthood no less than courage. More gentle and polished manners were introduced. when courtesy was recommended as the most amiable of knightly virtues. Violence and oppression decreased, when it was reckoned meritorious to check and to punish them. A scrupulous adherence to truth, with the most religious attention to fulfil every engagement. became the distinguishing characteristic of a gentleman. because chivalry was regarded as the school of honour. and inculcated the most delicate sensibility with respect to those points. The admiration of these qualities. together with the high distinctions and prerogatives conferred on knighthood in every part of Europe, in. spired persons of noble birth on some occasions with a species of military fanaticism, and led them to extravagant enterprises. But they deeply imprinted on their minds the principles of generosity and honour. These were strengthened by every thing that can affect the senses or touch the heart. The wild exploits of those romantic knights who sallied forth in quest of adventures, are well known, and have been treated with proper ridicule. The political and permanent effects of the spirit of chivalry have been less observed. Perhaps, the humanity which accompanies all the operations of war, the refinements of gallantry, and the point of honour, the three chief circumstances which distinguish modern from ancient manners, may be ascribed in a great measure to this institution, which has appeared whimsical to superficial observers, but by its effects has proved of great benefit to mankind. The sentiments which chivalry inspired, had a wonderful influence on manners and conduct during the twelfth, thirteenth, fourteenth, and fifteenth centuries. They were so deeply rooted, that they continued to operate after the vigour and reputation of the institution itself began to decline. Some considerable transactions, recorded in the following history, resemble the adventurous exploits of chivalry, rather than the well-regulated operations of sound policy. Some of the most eminent personages, whose characters will be delineated, were strongly tinctured with this romantic spirit. Francis I. was ambitious to distinguish himself by all the qualities of an accomplished knight, and endeavoured to imitate the enterprising genius of chivalry in war, as well as its pomp and courtesy during peace. The fame which the French monarch acquired by these splendid actions, so far dazzled his more temperate rival, that he departed on some occasions from his usual prudence and moderation, and emulated Francis in deeds of prowess or of gallantry. [DD]

The progress of science has great influence on the manners and character of men.

IX. The progress of science, and the cultivation of literature, had considerable effect in changing the manners of the European nations, and introducing that civility and refinement by which they are now distinguished. At the time when their empire was overturned, the Romans, though they had lost that correct taste which has ren-

dered the productions of their ancestors standards of excellence and model of imitations for succeeding ages, still preserved their love of letters, and cultivated the arts with great ardour. But rude bar-

Ignorance of the middle ages.

barians were so far from being struck with any admiration of these unknown accomplishments, that they despised them. They

were not arrived at that state of society, when those faculties of the human mind, which have beauty and elegance for their objects, begin to unfold themselves. They were strangers to most of those wants and desires which are the parents of ingenious invention; and as they did not comprehend either the merit or utility of the Roman arts, they destroyed the monuments of them with an industry not inferior to that with which

[DD] Note XXVII.

their posterity have since studied to preserve or to recover them. The convulsions occasioned by the settlement of so many unpolished tribes in the empire; the frequent as well as violent revolutions in every kingdom which they established, together with the interior defects in the form of government which they introduced, banished security and leisure; prevented the growth of taste, or the culture of science; and kept Europe, during several centuries, in that state of ignorance which has been already described. But the events and institutions which I have enumerated, produced great alterations in society. As soon as their operation in restoring liberty and independence to one part of the community began to be felt; as soon as they began to communicate to all the members of society some taste of the advantages arising from commerce, from public order, and from personal security, the human mind became conscious of powers which it did not formerly perceive, and fond of occupations or pursuits of which it was formerly incapable. Towards the beginning of the twelfth century, we discern the first symptoms of its awakening from that lethargy in which it had been long sunk, and observe it turning with curiosity and attention towards new objects.

The first literary efforts ill-directed, and the causes of this. The first literary efforts, however, of the European nations, in the middle ages, were extremely ill-directed. Among nations, as well as individuals, the powers of imagination attain some degree of vigour before the intellectual faculties are much exercised in

speculative or abstract disquisition. Men are poets before they are philosophers. They feel with sensibility, and describe with force, when they have made but little progress in investigation or reasoning. The age of Homer and of Hesiod long preceded that of Thales or of Socrates. But, unhappily for literature, our ancestors, deviating from this course which nature points out, plunged at once into the depths of abstruse and metaphysical inquiry. They had been converted

to the Christian faith soon after they settled in their new conquests. But they did not receive it pure. The presumption of men had added to the simple and instructive doctrines of Christianity the theories of a vain philosophy, that attempted to penetrate into mysteries, and to decide questions, which the limited faculties of the human mind are unable to comprehend or to resolve. These over-curious speculations were incorporated with the system of religion, and came to be considered as the most essential part of it. As soon, then, as curiosity prompted men to inquire and to reason, these were the subjects which first presented themselves, and engaged their attention. The scholastic theology, with its infinite train of bold disquisitions and subtle distinctions concerning points which are not the object of human reason, was the first production of the spirit of inquiry, after it began to resume some degree of activity and vigour in Europe. It was not, however, this circumstance alone that gave such a wrong turn to the minds of men, when they began again to exercise talents which they had so long neg-Most of the persons who attempted to revive literature in the twelfth and thirteenth centuries, had received instruction, or derived their principles of science, from the Greeks in the eastern empire, or from the Arabians in Spain and Africa. Both these people, acute and inquisitive to excess, had corrupted those sciences which they cultivated. The former rendered theology a system of speculative refinement, or of endless controversy. The latter communicated to philosophy a spirit of metaphysical and frivolous subtlety. Misled by these guides, the persons who first applied to science were involved in a maze of intricate inqui-Instead of allowing their fancy to take its natural range, and to produce such works of invention as might have improved their taste, and refined their sentiments; instead of cultivating those arts which embellish human life, and render it comfortable; they were fettered by authority, they were led astray by example, and wasted

the whole force of their genius in speculations as unavailing as they were difficult.

They had, however, considerable effects. But fruitless and ill-directed as these speculations were, their novelty roused, and their boldness interested, the human mind. The ardour with which men pursued those uninviting studies was astonishing. Genu-

ine philosophy was never cultivated, in any enlightened Schools, upon the model of those age, with more zeal. instituted by Charlemagne, were opened in every cathedral, and almost in every monastery of note. Colleges and universities were erected and formed into communities or corporations, governed by their own laws, and invested with separate and extensive juris-A regular course of diction over their own members. studies was planned. Privileges of great value were conferred on masters and scholars. Academical titles and honours of various kinds were invented as a recompense for both. Nor was it in the schools alone that superiority in science led to reputation and authority; it became an object of respect in life, and advanced such as acquired it to a rank of no inconsiderable eminence. Allured by all these advantages, an incredible number of students resorted to those new seats of learning, and crowded with eagerness into that new path which was opened to fame and distinction.

But how considerable soever these first efforts may appear, there was one circumstance which prevented the effects of them the stance which prevented the effects of them being more being as extensive.

But how considerable soever these first efforts may appear, there was one circumstance which prevented the effects of them the standard wader and the standard wader.

Europe, during the period under review, were barbarous. They were destitute of elegance, of force, and even of perspicuity. No attempt had been hitherto made to improve or to polish them. The Latin tongue was consecrated by the church to religion. Custom, with authority scarcely less sacred, had appropriated it to literature. All the sciences cultivated in the twelfth and thirteenth centuries were taught in

Latin. All books with respect to them were written in that language. It would have been deemed a degradation of any important subject, to have treated of it in a modern language. This confined science within a very narrow circle. The learned along were admitted into the temple of knowledge; the gate was shut against all others, who were suffered to remain involved in their former darkness and ignorance.

Its influence on manners ments attention.

But though science was thus prevented, during several ages, from diffusing itself through society, and its influence was much circumscribed; the progress which it made may be mentioned, nevertheless, among the great causes which contributed to introduce

a change of manners into Europe. The ardent though ill-judged spirit of inquiry which I have described, occasioned a fermentation of mind that put ingenuity and invention in motion, and gave them vigour. It led men to a new employment of their faculties, which they found to be agreeable as well as interesting. It accustomed them to exercises and occupations which tended to soften their manners, and to give them some relish for the gentle virtues peculiar to people among whom science has been cultivated with success. [EE]

The progress of commerce had great influence on manners and government.

X. The progress of commerce had considerable influence in polishing the manners of the European nations, and in establishing among them order, equal laws, and humanity. The wants of men, in the original and most simple state of society, are so few, and their desires so limited, that they rest con-

tented with the natural productions of their climate and soil, or with what they can add to these by their own rude industry. They have no superfluities to dispose of, and few necessities that demand a supply. Every little community subsisting on its own domestic stock, and satisfied with it, is either little acquainted with the states around it, or at va-

riance with them. Society and manners Low state of commerce must be considerably improved, and many provisions must be made for public order in the middle ages. and personal security, before a liberal intercourse can take place between different nations. We find, accordingly, that the first effect of the settlement of the barbarians in the empire was to divide those nations which the Roman power had united. Europe was broken into many separate communities. The intercourse between these divided states ceased almost entirely during several centuries. Navigation was dangerous in seas infested by pirates; nor could strangers trust to a friendly reception in the ports of uncivilized nations. Even between distant parts of the same kingdom, the communication was rare and difficult. lawless rapine of banditti, together with the avowed exactions of the nobles, scarcely less formidable and oppressive, rendered a journey of any length a perilous enterprise. Fixed to the spot in which they resided, the greater part of the inhabitants of Europe lost, in a great measure, the knowledge of remote regions, and were unacquainted with their names, their situations, their climates, and their commodities. [FF]

Various causes, however, contributed to Causes of revive the spirit of commerce, and to renew, its revival. in some degree, the intercourse between different nations. The Italians, by their connexion with Constantinople, and other cities of the Greek empire. had preserved in their own country considerable relish for the precious commodities and curious manufactures of the East. They communicated some knowledge of these to the countries contiguous to Italy. But this commerce being extremely limited, the intercourse which it occasioned between different nations was not considerable. The crusades, by leading multitudes from every corner of Europe into Asia, opened a more extensive communication between the East and West, which subsisted for two centuries; and though the

SECT. I.7

object of these expeditions was conquest and not commerce; though the issue of them proved as unfortunate as the motives for undertaking them were wild and enthusiastic; their commercial effects, as hath been shewn, were both beneficial and permanent. During the continuance of the crusades, the great cities in Italy, and in other countries of Europe, acquired liberty, and together with it such privileges as rendered them respectable and independent communities. Thus, in every state, there was formed a new order of citizens, to whom commerce presented itself as their proper object, and opened to them a certain path to wealth and consideration. Soon after the close of the Holy War, the mariner's compass was invented, which, by rendering navigation more secure, encouraged it to become more adventurous, facilitated the communication between remote nations, and brought them nearer to each other.

The Italian states, during the same pe-First riod, established a regular commerce with among the the East in the ports of Egypt, and drew from Italians: thence all the rich products of the Indies. They introduced into their own territories manufactures of various kinds, and carried them on with great ingenuity and vigour. They attempted new arts; and transplanted from warmer climates, to which they had been hitherto deemed peculiar, several natural productions which now furnish the materials of a lucrative and extended commerce. All these commodities, whether imported from Asia or produced by their own skill, they disposed of to great advantage among the other people of Europe, who began to acquire some taste for an elegance in living unknown to their ancestors, or despised by them. During the twelfth and thirteenth centuries, the commerce of Europe was almost entirely in the hands of the Italians, more commonly known in those ages by the name of Lombards. Companies or societies of Lombard merchants settled in every different kingdom. They were taken under the immediate protection of the several governments. They enjoyed extensive privileges and immunities. The operation of the ancient barbarous laws concerning strangers was suspended with respect to them. They became the carriers, the manufacturers, and the bankers of all Europe.

Then by the means of the Hanseatic league. While the Italians, in the south of Europe, were cultivating trade with such industry and success, the commercial spirit awakened in the North towards the middle of the thirteenth century. As the nations around the Baltic were, at that time, ex-

tremely barbarous, and infested that sea with their piracies, the cities of Lubec and Hamburgh, soon after they began to open some trade with these people, found it necessary to enter into a league of mutual defence. They derived such advantages from this union, that other towns acceded to their confederacy, and, in a short time, eighty of the most considerable cities scattered through those extensive countries which stretch from the bottom of the Baltic to Cologne on the Rhine, joined in the famous Hanseatic league, which became so formidable, that its alliance was courted, and its enmity was dreaded, by the greatest monarchs. members of this powerful association formed the first systematic plan of commerce known in the middle ages, and conducted it by common laws enacted in their general assemblies. They supplied the rest of Europe with naval stores, and pitched on different towns, the most eminent of which was Bruges in Flanders, where they established staples in which their commerce was regularly carried on. Thither the Lombards brought the productions of India, together with the manufactures of Italy, and exchanged them for the more bulky, but not less useful, commodities of the North. Hanseatic merchants disposed of the cargoes which they received from the Lombards, in the ports of the Baltic, or carried them up the great rivers into the interior parts of Germany.

Commerce makes progress in the Netherlands: This regular intercourse opened between the nations in the North and South of Europe, made them sensible of their mutual wants, and created such new and increasing demands for commodities of every kind, that it excited among the inhabitants of the

Netherlands a more vigorous spirit in carrying on the two great manufactures of wool and flax, which seem to have been considerable in that country as early as the age of Charlemagne. As Bruges became the centre of communication between the Lombard and Hanseatic merchants, the Flemings traded with both in that city to such extent as well as advantage, as spread among them a general habit of industry, which long rendered Flanders and the adjacent provinces the most opulent, the most populous, and best cultivated countries in Europe.

Struck with the flourishing state of these And in provinces, of which he discerned the true England. cause, Edward III. of England endeavoured to excite a spirit of industry among his own subjects, who. blind to the advantages of their situation, and ignorant of the source from which opulence was destined to flow into their country, were so little attentive to their commercial interests as hardly to attempt those manufactures, the materials of which they furnished to foreigners. By alluring Flemish artisans to settle in his dominions, as well as by many wise laws for the encouragement and regulation of trade, Edward gave a beginning to the woollen manufactures of England, and first turned the active and enterprising genius of his people towards those arts which have raised the English to the highest rank among commercial nations. This increase of commerce and of inter-The benecial effects course between nations, how inconsiderable soever it may appear in respect of their rapid and extensive progress during the last and present age, seems wonderfully great, when we compare it with the state of both in Europe previous to the

twelfth century. It did not fail of producing great Commerce tends to wear off those prejudices which maintain distinction and animosity between nations. It softens and polishes the manners of men. It unites them by one of the strongest of all ties, the desire of supplying their mutual wants. It disposes them to peace, by establishing in every state an order of citizens bound by their interest to be the guardians of public tranquillity. As soon as the commercial spirit acquires vigour, and begins to gain an ascendant in any society, we discover a new genius in its policy, its alliances, its wars, and its negotiations. spicuous proofs of this occur in the history of the Italian states, of the Hanseatic league, and the cities of the Netherlands, during the period under review. In proportion as commerce made its way into the different countries of Europe, they successively turned their attention to those objects, and adopted those manners, which occupy and distinguish polished nations. [GG]

[GG] Note XXX.

## VIEW

OF THE

## PROGRESS OF SOCIETY

IN

## EUROPE,

FROM THE

SUBVERSION OF THE ROMAN EMPIRE,

TO THE

BEGINNING OF THE SIXTEENTH CENTURY.

## SECTION II.

View of the Progress of Society in Europe, with respect to the command of the National Force requisite in Foreign Operations.

State of society greatly improved at the beginning of the fifteenth century.

Such are the events and institutions which, by their powerful operation, contributed gradually to introduce regular government and polished manners in the various nations of Europe. When we survey the state of society, or the character of individuals, at the opening of the fifteenth century, and then to view the condition of both at the time

turn back to view the condition of both at the time when the barbarous tribes which overturned the Roman power completed their settlement in their new conquest, the progress which mankind had made towards order and refinement will appear immense.

Still defective with respect to the command of the national Government, however, was still far from having attained that state in which extensive monarchies act with the united vigour of the whole community, or carry on great undertakings with perseverance and success. Small tribes or communities, even in their rudest state, may operate in concert, and

the national force. rudest state, may operate in concert, and exert their utmost force. They are excited to act, not by the distant objects or the refined speculations which interest or affect men in polished societies, but by their present feelings. The insults of an enemy kindle resentment; the success of a rival tribe awakens emulation: these passions communicate from breast to breast, and all the members of the community, with united ardour, rush into the field in order to gratify their revenge, or to acquire distinction. But in widely-extended states, such as the great kingdoms of Europe at the beginning of the fifteenth century, where there is little intercourse between the distant members of the community, and where every great enterprise requires previous concert and long preparation, nothing can rouse and call forth their united strength but the absolute command of a despot, or the powerful influence of regular policy. Of the former, the vast empires in the East are an example; the irresistible mandate of the sovereign reaches the most remote provinces of his dominions, and compels whatever number of his subjects he is pleased to summon, to follow his standard. The kingdoms of Europe, in the present age, are an instance of the latter; the prince, by the less violent, but no less effectual operation of laws, and a well-regulated government, is enabled to avail himself of the whole force of his state, and to employ it in enterprises which require strenuous and persevering efforts.

The power of monarchs very limited.

But at the opening of the fifteenth century, the political constitution in all the kingdoms of Europe was very different from either of these states of government. The

several monarchs, though they had somewhat enlarged

the boundaries of prerogative by successful encroachments on the immunities and privileges of the nobility, were possessed of an authority extremely limited. The laws and interior police of kingdoms, though much improved by the various events and regulations which I have enumerated, were still feeble and imperfect. In every country, a numerous body of nobles, who continued to be formidable notwithstanding the various expedients employed to depress them, watched all the motions of their sovereign with a jealous attention, which set bounds to his ambition, and either prevented his forming schemes of extensive enterprise, or obstructed the execution of them.

Their revenues of every prince were so extremely small as to be inadequate to any great undertaking. He depended for extraordinary supplies on the good-will of his subjects, who granted them often with a reluctant, and always with a sparing hand.

As the revenues of princes were inconsi-Their armies derable, the armies which they could bring unfit for into the field were unfit for long and effecconquest. tual service. Instead of being able to employ troops trained to skill in arms, and to military subordination, by regular discipline, monarchs were obliged to depend on such forces as their vassals conducted to their standard in consequence of their military tenures. These, as they were bound to remain under arms only for a short time, could not march far from their usual place of residence, and being more attached to the lord of whom they held, than to the sovereign whom they served, were often as much disposed to counteract as to forward his schemes. Nor were they, even if they had been more subject to the command of the monarch, proper instruments to carry into execution any great and arduous enterprise. The strength of an army, formed either for conquest or defence, lies in infantry. To the stability and discipline of their legions, consisting chiefly of infantry, the Romans, during the times of

the republic, were indebted for their victories; and when their descendants, forgetting the institutions which had led them to universal dominion, so far altered their military system as to place their principal confidence in a numerous cayalry, the undisciplined impetuosity of the barbarous nations, who fought mostly on foot, was sufficient, as I have already observed, to overcome them. These nations, soon after they settled in their new conquests, uninstructed by the fatal error of the Romans, relinquished the customs of their ancestors, and converted the chief force of their armies into cavalry. Among the Romans this change was occasioned by the effeminacy of their troops, who could not endure the fatigues of service, which their more virtuous and hardy ancestors had sustained with ease. Among the people who established the new monarchies into which Europe was divided, this innovation in military discipline seems to have flowed from the pride of the nobles, who, scorning to mingle with persons of inferior rank, aimed at being distinguished from them in the field, as well as during peace. The institution of chivalry, and the frequency of tournaments, in which knights, in complete armour, entered the lists on horseback with extraordinary splendour, displaying amazing address, force, and valour, brought cavalry into still greater esteem. The fondness for that service increased to such a degree, that, during the thirteenth and fourteenth centuries, the armies of Europe were composed almost entirely of cavalry. No gentleman would appear in the field but on horseback. To serve in any other manner, he would have deemed derogatory to his rank. The cavalry, by way of distinction, was called The Battize, and on it alone depended the fate of every action. The infantry, collected from the dregs and refuse of the people, ill armed and worse disciplined, was almost of no account.

They are incapable of forming

As these circumstances rendered the operations of particular kingdoms less considerable and less vigorous, so they long kept the

any general princes of Europe from giving such attention or extensive to the schemes and transactions of their plan of neighbours, as might lead them to form any operation. regular system of public security. were, of consequence, prevented from uniting in confederacy, or from acting with concert, in order to establish such a distribution and balance of power, as should hinder any state from rising to a superiority, which might endanger the general liberty and independence. During several centuries, the nations of Europe appear to have considered themselves as separate societies, scarcely connected together by any common interest, and little concerned in each other's affairs or operations. An extensive commerce did not afford them an opportunity of observing and penetrating into the schemes of every different state. They had not ambassadors residing constantly in every court to watch and give early intelligence of all its motions. pectation of remote advantages, or the prospect of distant and contingent evils, were not sufficient to excite nations to take arms. Such only as were within the sphere of immediate danger, and unavoidably exposed to injury or insult, thought themselves interested in any contest, or bound to take precaution for their own safety.

little connected with each other.

Whoever records the transactions of any They were of the more considerable European states during the two last centuries, must write the history of Europe. Its various kingdoms, throughout that period, have been formed

into one great system, so closely united, that each holding a determinate station, the operations of one are so felt by all, as to influence their counsels and regulate their measures. But previous to the fifteenth century, unless when vicinity of territory rendered the occasions of discord frequent and unavoidable, or when national emulation fomented or imbittered the spirit of hostility, the affairs of different countries are seldom interwoven with each other. In each kingdom of Europe great events and revolutions happened, which the other powers beheld with almost the same indifference as if they had been uninterested spectators, to whom the effect of these transactions could never extend.

tion of this from the affairs of France.

During the violent struggles between A confirma- France and England, and notwithstanding the alarming progress which was made towards rendering one prince the master of both these kingdoms, hardly one measure which can be considered as the result of a

sagacious and prudent policy, was formed in order to guard against an event so fatal to Europe. The dukes of Burgundy and Bretagne, whom their situation would not permit to remain neutral, engaged, it is true, in the contest; but in taking their part they seem rather to have followed the impulse of their passions, than to have been guided by any just discernment of the danger which threatened themselves and the tranquillity of Europe. The other princes, seemingly unaffected by the alternate successes of the contending parties, left them to decide the quarrel by themselves, or interposed only by feeble and ineffectual negotiations.

Notwithstanding the perpetual hostilities From those in which the various kingdoms of Spain were of Spain. engaged during several centuries, and the successive occurrences which visibly tended to unite that part of the continent into one great monarchy, the princes of Europe hardly took any step from which we may conclude that they gave a proper attention to that important event. They permitted a power to arise imperceptibly, and to acquire strength there, which soon

became formidable to all its neighbours.

Amidst the violent convulsions with which From those the spirit of domination in the see of Rome, and the turbulent ambition of the German nobles, agitated the empire, neither the authority of the popes, seconded by all their artifices and intrigues, nor the solicitations of the emperors, could induce any of the powerful monarchs in Europe to engage in their

quarrel, or to avail themselves of many favourable opportunities of interposing with effect and advantage.

This inactivity occasioned entirely by the state of government. This amazing inactivity, during transactions so interesting, is not to be imputed to any incapacity of discerning their political consequences. The power of judging with sagacity, and of acting with vigour, is the portion of men of every age. The monarchs who reigned in the different kingdoms of

Europe during several centuries, were not blind to their particular interest, negligent of the public safety, or strangers to the method of securing both. If they did not adopt that salutary system, which teaches modern politicians to take the alarm at the prospect of distant dangers, which prompts them to check the first eucroachments of any formidable power, and which renders each state the guardian, in some degree, of the rights and independence of all its neighbours, this was owing entirely to such imperfections and disorders in the civil government of each country, as made it impossible for sovereigns to act suitably to those ideas, which the posture of affairs, and their own observation, must have suggested.

Events happened during the 15th century, which render the efforts of nations more powerful and extensive.

But during the course of the fifteenth century, various events happened, which, by giving princes more entire command of the force in their respective dominions, rendered their operations more vigorous and extensive. In consequence of this, the affairs of different kingdoms becoming more frequently as well as more intimately connected, they were gradually accustomed to act in concert and confederacy, and were

insensibly prepared for forming a system of policy, in order to establish or to preserve such a balance of power as was most consistent with the general security. It was during the reign of Charles the Fifth, that the ideas, on which this system is founded, first came to be fully understood. It was then, that the

maxims by which it has been uniformly maintained since that era, were uniformly adopted. On this account, a view of the causes and events which contributed to establish a plan of policy, more salutary and extensive than any that has taken place in the conduct of human affairs, is not only a necessary introduction to the following work, but is a capital object in the history of Europe.

The first of these was the depriving the English of their territories on the continent.

The first event that occasioned any considerable alteration in the arrangement of affairs in Europe, was the annexation of the extensive territories, which England possessed on the continent, to the crown of France. While the English were masters of several of the most fertile and opulent provinces in France, and a great part of its most martial inhabitants was bound to follow their stand-

ard, an English monarch considered himself rather as the rival, than as the vassal of the sovereign of whom he held. The kings of France, circumscribed and thwarted in their schemes and operations by an adversary no less jealous than formidable, durst not enter upon any enterprise of importance or of difficulty. The English were always at hand, ready to oppose them. They disputed even their right to their crown, and being able to penetrate, with ease, into the heart of the kingdom, could arm against them those very hands which ought to have been employed in their defence. Timid counsels and feeble efforts were natural to monarchs in such a situation. France, dismembered and overawed, could not attain its proper station in the system of Europe. But the death of Henry V. of England, happily for France, and not unfortunately for his own country, delivered the French from the calamity of having a foreign master seated on their throne. The weakness of a long minority, the dissensions in the English court, together with the unsteady and languid conduct which these occasioned, afforded the French a favourable opportunity of recovering the territories which they had lost. The native valour of the French nobility, heightened to an enthusiastic confidence, by a supposed interposition of Heaven in their behalf, conducted in the field by skilful leaders, and directed in the cabinet by a prudent monarch, was exerted with such vigour and success, during this favourable juncture, as not only wrested from the English their new conquests, but stript them of their ancient possessions in France, and reduced them within the narrow precincts of Calais, and its petty territory.

The effects of this on increasing the power of the French monarchy.

As soon as so many considerable provinces were reunited to their dominions, the kings of France, conscious of this acquisition of strength, began to form bolder schemes of interior policy, as well as of foreign operations. They immediately became formidable to their neighbours, who

began to fix their attention on their measures and motions, the importance of which they fully perceived. From this era, France, possessed of the advantages which it derives from the situation and contiguity of its territories, as well as from the number and valour of its people, rose to new influence in Europe, and was the first power in a condition to give alarm to the jealousy or fears of the states around it.

On the state of the military force in the nation.

Nor was France indebted for this increase of importance merely to the reunion of the provinces which had been torn from it. A circumstance attended the recovery of these, which, though less considerable and less observed, contributed not a little to give

additional vigour and decision to all the efforts of that monarchy. During the obstinate struggles between France and England, all the defects of the military system under the feudal government were sensibly felt. A war of long continuance languished, when carried on by troops bound and accustomed to keep the field only for a short time. Armies, composed chiefly of heavy-armed cavalry, were unfit either for

the defence or the attack of the many towns and castles, which it became necessary to guard or to reduce. In order to obtain such permanent and effective force as became requisite during these lengthened contests, the kings of France took into their pay considerable bands of mercenary soldiers, levied sometimes among their own subjects, and sometimes in foreign countries. But as the feudal policy provided no sufficient fund for such extraordinary service, these adventurers were dismissed at the close of every campaign, or upon any prospect of accommodation; and having been little accustomed to the restraints of discipline, they frequently turned their arms against the country which they had been hired to defend, and desolated it with cruelty not inferior to that of its foreign enemies.

It occasions the introduction of standing armies. A body of troops kept constantly on foot, and regularly trained to military subordination, would have supplied what was wanting in the feudal constitution, and have furnished princes with the means of executing enterprises to which they were then unequal.

Such an establishment, however, was so repugnant to the genius of feudal policy, and so incompatible with the privileges and pretensions of the nobility, that during several centuries no monarch was either so bold or so powerful as to venture on any step towards introducing it. At last Charles VII., availing himself of the reputation which he had acquired by his successes against the English, and taking advantage of the impressions of terror which such a formidable enemy had left upon the minds of his subjects, executed that which his predecessors durst not attempt. Under pretence of having always A.D. 1445.

against any sudden invasion of the English, he, at the time when he disbanded his other troops, retained under arms a body of fine thousand cavalry, and of sixteen thousand infantry. He appropriated funds for the regular payment of these; he stationed them in different

places of the kingdom, according to his pleasure; and appointed the officers who commanded and disciplined them. The prime nobility courted this service, in which they were taught to depend on their sovereign, to execute his orders, and to look up to him as the judge and rewarder of their merit. The feudal militia, composed of the vassals whom the nobles could call out to follow their standard, as it was in no degree comparable to a body of soldiers regularly trained to war, sunk gradually in reputation. The strength of an army was no longer estimated solely by the number of cavalry which served in it. From the time that gunpowder was invented, and the use of cannon in the field became general, horsemen cased in complete armour lost all the advantages which gave them the preeminence over other soldiers. The helmet, the shield, and the breast-plate, which resisted the arrow or the spear, no longer afforded them security against these new instruments of destruction. The service of infantry rose again into esteem, and victories were gained, and conquests made, chiefly by their efforts. The nobles and their military tenants, though sometimes summoned to the field, according to ancient form, were considered as an encumbrance upon the troops with which they acted; and were viewed with contempt by soldiers accustomed to the vigorous and steady operations of regular service.

The effects of this.

Thus the regulations of Charles the Seventh, by establishing the first standing army known in Europe, occasioned an important revolution in its affairs and policy. By taking from the nobles the sole direction of the national military force, which had raised them to such high authority and importance, a deep wound was given to the feudal aristocracy in that part where its power seemed to be most complete.

France, by forming this body of regular troops, at a time when there was hardly a squadron or company kept in constant pay in any other part of Europe, ac-

quired such advantages over its neighbours, either in attack or defence, that self-preservation made it necessary for them to imitate its example. Mercenary troops were introduced into all the considerable kingdoms on the continent. They gradually became the only military force that was employed or trusted. It has long been the chief object of policy to increase and to support them: it has long been the great aim of princes and ministers to discredit and to annihilate all other means of national activity or defence.

The monarchs of France encouraged to extend their preiogative.

As the kings of France got the start of other powers in establishing a military force in their dominions, which enabled them to carry on foreign operations with more vigour and to greater extent, so they were the first who effectually broke the feudal aristocracy, and humbled the great vassals below their exceptions power had

of the crown, who by their exorbitant power had long circumscribed the royal prerogative within very narrow limits, and had rendered all the efforts of the monarchs of Europe inconsiderable. Many things concurred to undermine gradually the power of the feudal aristocracy in France. The wealth and property of the nobility were greatly impaired during the long wars which the kingdom was obliged to maintain with the English. The extraordinary zeal with which they exerted themselves in defence of their country against its ancient enemies, exhausted entirely the fortunes of some great families. As almost every province in the kingdom was in its turn the seat of war, the lands of others were exposed to the depredations of the enemy, were ravaged by the mercenary troops which their sovereigns hired occasionally, but could not pay, or were desolated with rage still more destructive by the peasants in different insurrections. At the same time, the necessities of government having forced their kings upon the desperate expedient of making great and sudden alterations in the current coin of the kingdom, the fines, quit-rents, and other payments fixed by ancient

custom, sunk much in value, and the revenues of a fief were reduced far below the sum which it had once yielded. During their contests with the English, in which a generous nobility courted every station where danger appeared, or honour could be gained, many families of note became extinct, and their fiefs were reunited to the crown. Other fiefs, in a long course of years, fell to female heirs, and were divided among them, were diminished by profuse donations to the church, or were broken and split by the succession of remote collateral heirs.

Encouraged by these manifest symptoms of decline in that body which he wished to The progress of the depress, Charles VII., during the first interroval powval of peace with England, made several er under Charles VII. efforts towards establishing the regal prerogative on the ruins of the aristocracy. But his obligations to the nobles were so many as well as recent, and their services in recovering the kingdom so splendid, as rendered it necessary for him to proceed with moderation and caution. Such, however, was the authority which the crown had acquired by the progress of its arms against the English, and so much was the power of the nobility diminished, that, without any opposition, he soon made innovations of great consequence in the constitution. He not only established that formidable body of regular troops, which has been mentioned, but he was the first monarch of France who, by his royal edict, without the concurrence of the states-general of the kingdom, levied an extraordinary subsidy on his people. prevailed likewise with his subjects to render several taxes perpetual, which had formerly been imposed occasionally, and exacted during a short time. By means of all these innovations, he acquired such an increase of power, and extended his prerogative so far beyond its ancient limits, that, from being the most dependant prince who had ever sat upon the throne of France, he

Boulainvilliers Histoire de Gouvernement de France, Lettre xii.

came to possess, during the latter years of his reign, a degree of authority which none of his predecessors had enjoyed for several ages.<sup>t</sup>

That plan of humbling the nobility which Under Charles began to execute, his son Louis XI. Louis XI. carried on with a bolder spirit, and with greater success. Louis was formed by nature to be a tyrant; and at whatever period he had been called to ascend the throne, his reign must have abounded with schemes to oppress his people, and to render his own power absolute. Subtle, unfeeling, cruel; a stranger to every principle of integrity, and regardless of decency, he scorned all the restraints which a sense of honour, or the desire of fame, impose even upon ambitious men. Sagacious, at the same time, to discern what he deemed his true interest, and influenced by that alone, he was capable of pursuing it with a persevering industry, and of adhering to it with a systematic spirit, from which no object could divert, and no danger could deter him.

His measures for humbling the nobility. The maxims of his administration were as profound as they were fatal to the privileges of the nobility. He filled all the departments of government with new men, and often with persons whom he called from the lowest as well as most despised functions in

life, and raised at pleasure to stations of great power or trust. These were his only confidants, whom he consulted in forming his plans, and to whom he committed the execution of them: while the nobles, accustomed to be the companions, the favourites, and the ministers of their sovereigns, were treated with such studieu and mortifying neglect, that if they would not submit to follow a court in which they appeared without any shadow of their ancient power, they were obliged to retire to their castles, where they remained unemployed and forgotten. Not satisfied with having ren-

<sup>&</sup>lt;sup>t</sup> Histoire de France par Velly et Villaret, tom. xv. 331, &c. 389; tom. xvi. 324. Variations de la Monarchies Françoise, tom. iii. 162.

dered the nobles of less consideration, by taking out of their hands the sole direction of affairs, Louis added insult to neglect; and by violating their most valuable privileges, endeavoured to degrade the order, and to reduce the members of it to the same level with other Persons of the highest rank among them, if subjects. so bold as to oppose his schemes, or so unfortunate as to awaken the jealousy of his capricious temper, were persecuted with rigour, from which all who belonged to the order of nobility had hitherto been exempt; they were tried by judges who had no right to take cognizance of their actions, and were subjected to torture, or condemned to an ignominious death, without regard to their birth or condition. The people, accustomed to see the blood of the most illustrious personages shed by the hands of the common executioner, to behold them shut up in dungeons, and carried about in cages of iron, began to view the nobility with less reverence than formerly, and looked up with terror to the royal authority, which seemed to have humbled or annihilated every other power in the kingdom.

And of dividing them. At the same time, Louis, being afraid that oppression might rouse the nobles, whom the rigour of his government had intimidated, or

that self-preservation might at last teach them to unite, dexterously scattered among them the seeds of discord, and industriously fomented those ancient animosities between the great families, which the spirit of jealousy and emulation, natural to the feudal government, had originally kindled and still kept alive. To accomplish this, all the arts of intrigue, all the mysteries and refinements of his fraudulent policy were employed, and with such success, that at a juncture which required the most strenuous efforts, as well as the most perfect union, the nobles never acted, except during one short sally of resentment at the beginning of his reign, either with vigour or in concert.

He adds to the numthe numleges, he added to the power and prerogaber of standing forces.

tive of the crown. In order to have at command such a body of soldiers as might be sufficient to crush any force that his dis-

sufficient to crush any force that his disaffected subjects could draw together, he not only kept on foot the regular troops which his father had raised, but, besides augmenting their number considerably, he took into his pay six thousand Swiss, at that time the best disciplined and most formidable infantry in Europe. From the jealousy natural to tyrants, he confided in these foreign mercenaries, as the most devoted instruments of oppression, and the most faithful guardians of the power which he had usurped. That they might be ready to act on the shortest warning, he, during the latter years of his reign, kept a considerable body of them encamped in one place.

He augments the revenues of the crown. Great funds were requisite, not only to defray the expense of this establishment, but to supply the sums employed in the various enterprises which the restless activity of his genius prompted him to undertake.

But the prerogative that his father had assumed, of levying taxes without the concurrence of the statesgeneral, which he was careful not only to retain but to extend, enabled him to provide in some measure for the increasing charges of government.

His address in managing the assembly of states. What his prerogative, enlarged as it was, could not furnish, his address procured. He was the first monarch in Europe who discovered the method of managing those great assemblies, in which the feudal policy hadvested the power of granting subsidies and

of imposing taxes. He first taught other princes the fatal and of beginning their attack on public liberty, by corrupting the source from which it should flow. By exerting all his power and address in influencing the election of representatives, by bribing or overawing the members, and by various changes which he art-

u Mem. de Comines, tom. 1. 367. Dan. Hist. de la Millice Françoise, tom, i. 182. \* Mem. de Com. tom. i. 381.

fully made in the form of their deliberations, Louis acquired such entire direction of these assemblies, that, from being the vigilant guardians of the privileges and property of the people, he rendered them tamely subservient towards promoting the most odious measures of his reign.\* As no power remained to set bounds to his exactions, he not only continued all the taxes imposed by his father, but he made great additions to them, which amounted to a sum that appeared astonishing to his contemporaries."

He enlarges the bounds of the French monarchy. Nor was it the power alone or wealth of the crown that Louis increased; he extended its territories by acquisitions of various kinds. He got possession of Rousillon by purchase; Provence was conveyed to him by the will of Charles de Anjou; and upon

the death of Charles the Bold, he seized, with a strong hand, Burgundy and Artois, which had belonged to that prince. Thus, during the course of a single reign, France was formed into one compact kingdom, and the steady unrelenting policy of Louis XI. not only subdued the haughty spirit of the feudal nobles, but established a species of government, scarcely less absolute, or less terrible than eastern despotism.

By all these the French government rendered more active and enterprising.

But fatal as his administration was to the liberties of his subjects, the authority which he acquired, the resources of which he became master, and his freedom from restraint in concerting his plans, as well as in executing them, rendered his reign active and enterprising. Louis negotiated in all the Europe; he observed the motions of all his

courts of Europe; he observed the motions of all his neighbours; he engaged, either as principal, or as an

Mem. de Comin. tom. i. 136. Chro. Scandal. ibid. tom. ii. p. 71.

y Mem. de Com. tom. i. 334.

<sup>\*</sup> Charles VII. levied taxes to the amount of 1,800,000 francs; Louis XI. raised 4,700,000. The former had in pay 9000 cavalry and 16,000 infantry. The latter augmented the cavalry to 15,000, and the infantry to 25,000. Mem. de Comines, i. 384.

auxiliary, in every great transaction; his resolutions were prompt, his operations vigorous; and, upon every emergence he could call forth into action the whole force of his kingdom. From the era of his reign, the kings of France, no longer fettered and circumscribed at home by a jealous nobility, have exerted themselves more abroad, have formed more extensive schemes of foreign conquests, and have carried on war with a spirit and vigour long unknown in Europe.

The example which Louis set was too Steps taken inviting not to be imitated by other princes. Henry VII. as soon as he was seated on the throne of England, formed the plan of the crown in England; the power of the nobility. The circum-

stances under which he undertook to execute it were less favourable than those which induced Charles VII. to make the same attempt; and the spirit with which he conducted it was very different from that of Louis XI. Charles, by the success of his arms against the English, by the merit of having expelled them out of so many provinces, had established himself so firmly in the confidence of his people, as encouraged him to make bold encroachments on the ancient constitution. The daring genius of Louis broke through every barrier, and endeavoured to surmount or to remove every obstacle that stood in his way. But Henry held the sceptre by a disputed title; a popular faction was ready, every moment, to take arms against him; and after long civil wars, during which the nobility had often displayed their power in creating and deposing kings, he felt that the regal authority had been so much relaxed, and that he entered into possession of a prerogative so much abridged, as rendered it necessary to carry on his measures deliberately, and without any violent exertion. He endeavoured to undermine that formidable structure, which he durst not attack by open force. His schemes, though cautious and slow in their operation, were well concerted, and productive in the

end of great effects. By his laws, permitting the barons to break the entails of their estates, and expose them to sale; by his regulations to prevent the nobility from keeping in their service those numerous bands of retainers, which rendered them formidable and turbulent; by favouring the rising power of the commons; by encouraging population, agriculture, and commerce: by securing to his subjects, during a long reign, the enjoyment of the blessings which flow from the arts of peace; by accustoming them to an administration of government, under which the laws were executed with steadiness and vigour; he made imperceptibly considerable alterations in the English constitution, and transmitted to his successor authority so extensive, as rendered him one of the most absolute monarchs in Europe, and capable of the greatest and most vigorous efforts.

In Spain, the union of all its crowns by the And in marriage of Ferdinand and Isabella; the glory Spain. that they acquired by the conquests of Granada, which brought the odious dominion of the Moors to a period; the command of the great armies which it had been necessary to keep long on foot, in order to accomplish this; the wisdom and steadiness of their administration; and the address with which they availed themselves of every incident that occurred to humble the nobility, and to extend their own prerogative, conspired in raising these monarchs to such eminence and authority, as none of their predecessors had ever en-Though several causes, which shall be explained in another place, prevented their attaining the same powers with the kings of France and England, and preserved the feudal constitution longer entire in Spain, their great abilities supplied the defects of their prerogative, and improved, with such dexterity, all the advantages which they possessed, that Ferdinand carried on his foreign operations, which were very extensive, with extraordinary vigour and effect.

Events happened. which called the several monarchs to exert the new powers which they had acquired.

While these princes were thus enlarging the boundaries of prerogative, and taking such steps towards rendering their kingdom capable of acting with union and force, events occurred which called them forth to exert the new powers which they had acquired. These engaged them in such a series of enterprises and negotiations, that the affairs of all the considerable nations in Europe came to be insensibly interwoven

with each other; and a great political system was gradually formed, which grew to be an object of universal attention.

The first of these events

riage of the heiress of

Burgundy.

The first event which merits notice, on account of its influence in producing this change in the state of Europe, was the marwas the marriage of the daughter of Charles the Bold. the sole heiress of the house of Burgundy. the house of For some years before her father's death. she had been considered as the apparent

successor to his territories, and Charles had made proposals of marrying her to several different princes, with a view of alluring them, by that offer, to favour the schemes which his restless ambition was continually

forming.

rich inhetitance.

This rendered the alliance with her an The imobject of general attention; and all the adportance vantages of acquiring possession of her terof this to the state of ritories, the most opulent at that time, and Europe. the best cultivated of any on this side of the A. D. 1477. Alps, were perfectly understood. As soon, January 5. then, as the untimely death of Charles opened the succession, the eyes of all the princes in Europe, were turned towards Mary, and they felt themselves deeply interested in the choice which she was about to make of the person on whom she would bestow that

Louis XI. from whose kingdom several of the provinces which she possessed had been dismembered,

SECT. II.] and whose dominions streethed along the Views of Louis XI. frontier of her territories, had every inducewith respect ment to court her alliance. He had, likewise, to it. a good title to expect the favourable reception of any reasonable proposition he should make, with respect to the disposal of a princess, who was the vassal of his crown, and descended from the royal blood of France. There were only two propositions, however, which he could make with propriety. The one was the marriage of the dauphin, the other that of the count of Angouleme, a prince of the blood, with the heiress of Burgundy. By the former, he would have annexed all her territories to his crown, and have rendered France at once the most respectable monarchy in Europe. But the great disparity of age between the two parties, Mary being twenty, and the dauphin only eight years old; the avowed resolution of the Flemings, not to choose a master possessed of such power as might enable him to form schemes dangerous to their liberties; together with their dread of falling under the odious and oppressive government of Louis, were obstacles in the way of executing this plan, which it was vain to think of surmounting. By the latter, the accomplishment of which might have been attained with ease, Mary having discovered some inclination to a match with the count of Angouleme, Louis would have prevented the dominions of the house of Burgundy from being conveyed to a rival power, and in return for such a splendid establishment for the count of Angouleme, he must have obtained, or would have extorted from him, concessions highly beneficial to the crown of France. But Louis had been accustomed so long to the intricacies of a crooked and insidious policy, that he could not be satisfied with what was obvious and simple; and was so fond of artifice and refinement, that he came to consider these rather as an

ultimate object, than merely as the means of con-

ducting affairs. From this principle, no less than from <sup>2</sup> Mem. de Comines. i. 358.

his unwillingness to aggrandize any of his own subjects, or from his desire of oppressing the house of Burgundy, which he hated, he neglected the course which a prince, less able and artful, would have taken, and followed one more suited to his own genius.

The singular course which he followed. He proposed to render himself, by force of arms, master of those provinces which Mary held of the crown of France, and even to push his conquests into her other territories, while he amused her with insist-

ing continually on the impracticable match with the dauphin. In prosecuting this plan, he displayed wonderful talents and industry, and exhibited such scenes of treachery, falsehood, and cruelty, as are amazing even in the history of Louis XI. Immediately upon the death of Charles, he put his troops in motion, and advanced towards the Netherlands. He corrupted the leading men in the provinces of Burgundy and Artois. and seduced them to desert their sovereign. He got admission into some of the frontier towns, by bribing the governors; the gates of others were opened to him in consequence of his intrigues with the inhabitants. He negotiated with Mary; and, in order to render her odious to her subjects, he betrayed to them her most important secrets. He carried on a private correspondence with the two ministers whom she chiefly trusted, and then communicated the letters which he had received from them to the states of Flanders, who, enraged at their perfidy, brought them immediately to trial, tortured them with extreme cruelty, and, unmoved by the tears and entreaties of their sovereign, who knew and approved of all that the ministers had done, they beheaded them in her presence.2

The effect of this, the marriage of Maximilian with the

While Louis, by this conduct, unworthy of a great monarch, was securing the possession of Burgundy, Artois, and the towns on the Somfae, the states of Flanders carried on a negotiation with the emperor

<sup>2</sup> Mem. de Comines, liv. v. chap. 15. p. 309, &c.

Frederic III. and concluded a treaty of marheiress of Burgundy, riage between their sovereign and his son. A. Ď. 1477. Maximilian, archduke of Austria. The illustrious birth of that prince, as well as the high dignity of which he had the prospect, rendered the alliance honourable for Mary, while, from the distance of his hereditary territories, and the scantiness of his revenues, his power was so inconsiderable, as did not excite the jealousy or fear of the Flemings.

Thus Louis, by the caprice of his temper, and the excess of his refinements, put the The influence of that house of Austria in possession of this noble on the state inheritance. By this acquisition, the founof Europe. dation of the future grandeur of Charles V. was laid; and he became master of those territories which enabled him to carry on his most formidable and decisive operations against France. Thus, too, the

same monarch who first united the interior force of France, and established it on such a footing as to render it formidable to the rest of Europe, contributed, far contrary to his intention, to raise up a rival power, which, during two centuries, has thwarted the measures, opposed the arms, and checked the progress of his successors.

The next considerable event was the invasion of Italy by Charles 1494.

The motives of this.

The next event of consequence in the fifteenth century was the expedition of Charles VIII. into Italy. This occasioned revolutions no less memorable; produced alterations, both in the military and political system, which were more immediately per-VIII. A. D. ceived; roused the states of Europe to bolder efforts; and blended their affairs and interests more closely together. - mild administration of Charles, a weak but generous prince, seems to have revived the

spirit and genius of the French nation, which the rigid despotism of Louis XI. his father, had depressed, and almost extinguished. The ardour for military service, natural to the French nobility, returned, and their

106 young monarch was impatient to distinguish his reign by some splendid enterprise. While he was uncertain towards what quarter he should turn his arms, the solicitations and intrigues of an Italian politician, no less infamous on account of his crimes, than eminent for his abilities, determined his choice. Ludovico Sforza, having formed the design of deposing his nephew the duke of Milan, and of placing himself on the ducal throne, was so much afraid of a combination of the Italian powers to oppose this measure, and to support the injured prince, with whom most of them were connected by blood or alliance, that he saw the necessity of securing the aid of some able protector. The king of France was the person to whom he applied; and without disclosing his own intentions, he laboured to prevail with him to march into Italy, at the head of a powerful army, in order to seize the crown of Naples, to which Charles had pretensions as heir of the house of Anjou. The right to that kingdom, claimed by the Anjevin family, had been conveyed to Louis XI. by Charles of Anjou, count of Maine and Provence. But that sagacious monarch, though he took immediate possession of those territories of which Charles was really master, totally disregarded his ideal title to a kingdom, over which another prince reigned in tranquillity; and uniformly declined involving himself in the labyrinth of Italian politics. His son, more adventurous, or more inconsiderate, embarked eagerly in this enterprise; and contemning all the remonstrances of his most experienced counsellors, prepared to carry it on with the utmost vigour.

The power which Charles possessed was His re- so great, that he reckoned himself equal to sources for this arduous undertaking. His father had this entertransmitted to him such an ample prerogaprise. tive, as gave him the entire command of his kingdom. He himself had added considerably to the extent of his dominions, by his prudent marriage with

the heiress of Bretagne, which rendered him master of

that province, the last of the great fiefs that remained to be annexed to the crown. He soon assembled forces which he thought sufficient; and so impatient was he to enter on his career as a conqueror, that, sacrificing what was real for what was chimerical, he restored Rousillon to Ferdinand, and gave up part of his father's acquisitions in Artois to Maximilian, with a view of inducing these Princes not to molest France, while he was carrying on his operations in Italy.

His preparations for it.

But so different were the efforts of the states of Europe in the fifteenth century, from those which we shall behold in the course of this history, that the army with which Charles undertook this great enterprise, did not exceed 20,000 men. The train of artillery, however, the ammunition,

and warlike stores of every kind provided for its use, were so considerable, as to bear some resemblance to

the immense apparatus of modern war.b

When the French entered Italy, they met with nothing able to resist them. The Italian powers having remained, during a long period, undisturbed by the invasion of any foreign enemy, had formed a system with respect to their affairs, both in peace and war, peculiar to themselves. In order to adjust the interests, and balance the power, of the different states into which Italy was divided, they were engaged in perpetual and endless negotiations with each other, which they conducted with all the subtlety of a refining and deceitful policy. Their contests in the field, when they had recourse to arms, were decided in mock battles, by innocent and bloodless victories. Upon the first appearance of the danger which now impended, they had recourse to the arts which they had studied, and employed their utmost skill in intrigue in order to avert it. But this proving ineffectual, their bands of effeminate mercenaries, the only military force that remained in the country, being fit only for the parade of service, were terrified at the aspect of real war.

b Mezeray Hist. tom. ii. 777.

and shrunk at its approach. The impetuosity of the French valour appeared to them irresistible. Florence, Pisa, and Rome, opened their gates as the French army advanced. The prospect of this dreadful invasion struck one king of Naples with such panic terror, that he died (if we may believe historians) of the fright. Another abdicated his throne from the same pusillanimous spirit. A third fled out of his dominions, as soon as the enemy appeared on the Neapolitan frontiers. Charles, after marching thither from the bottom of the Alps, with as much rapidity, and almost as little opposition, as if he had been on a progress through his own dominions, took quiet possession of the throne of Naples, and intimidated or gave law to every power in Italy.

Its effects, particularly in giving rise to the system concerning a balance of power. Such was the conclusion of an expedition, that must be considered as the first great exertion of those new powers which the princes of Europe had acquired, and now began to exercise. Its effects were no less considerable than its success had been astonishing. The Italians, unable to resist the impression of the enemy, who broke in upon them, permitted him to hold on his

course undisturbed. They quickly perceived that no single power, which they could rouse to action, was an equal match for a monarch who ruled over such extensive territories, and was at the head of such a martial people; but that a confederacy might accomplish what the separate members of it durst not attempt. To this expedient, the only one that remained to deliver or to preserve them from the yoke, they had recourse. While Charles inconsiderately wasted his time at Naples in festivals and triumphs on account of his past successes, or was fondly dreaming of future conquests in the East, to the empire of which he now aspired, they formed against him a powerful combination of almost all the Italian states, supported by the emperor Maximilian, and Ferdinand, king of Aragon. The union of so many powers, who suspended or forget all their particular animosities, that they might act in concert against an enemy who had become formidable to them all, awakened Charles from his thoughtless security. He saw now no prospect of safety but in returning to France. An army of thirty thousand men, assembled by the allies, was ready to obstruct his march; and though the French, with a daring courage, which more than countervailed their inferiority in number, broke through that great body, and gained a victory, which opened to their monarch a safe passage into his own territories, he was stripped of all his conquests in Italy in as short a time as it had taken to acquire them; and the political system in that country resumed the same appearance as before his invasion.

The sudden and decisive effects of this confederacy seems to have instructed the princes and statesmen of Italy as much as the irruption of the French had disconcerted and alarmed them. They had This beextended, on this occasion, to the affairs of comes the great object Europe, the maxims of that political science which had hitherto been applied only to reof policy, first in Italy, gulate the operations of the petty states in and then in their own country. They had discovered the Europe. method of preventing any monarch from rising to such a degree of power, as was inconsistent with the general liberty, and had manifested the importance of attending to that great secret in modern policy, the preservation of a proper distribution of power among all the members of the system into which the states of Europe are formed. During all the wars of which Italy from that time was the theatre, and amidst the hostile operations which the imprudence of Louis Xil., and the ambition of Ferdinand of Aragon, carried on in that country, with little interruption, from the close of the fifteenth century to that period at which the subsequent history commences, the maintaining a proper balance of power between the contending parties became the great object of attention to the statesmen of Italy. Nor was the idea confined to them. Self-preservation taught

The wars

other powers to adopt it. It grew to be fashionable and universal. From this era we can trace the progress of that intercourse between nations, which has linked the powers of Europe so closely together, and can discern the operations of that provident policy which during peace, guards against remote and contingent dangers, and, in war, has prevented rapid and destructive conquests.

This was not the only effect of the opera-

tions which the great powers of Europe carin Italy ried on in Italy. They contributed to render render general such a change as the French had standing armies gebegun to make in the state of their troops, neral. and obliged all the princes, who appeared on this new theatre of action, to put the military force of their kingdoms on an establishment similar to that of When the seat of war came to be remote from the countries which maintained the contest, the service of the feudal vassals ceased to be of any use; and the necessity of employing soldiers regularly trained to arms, and kept in constant pay, came at once to be evident. When Charles VIII. marched into Italy, his cavalry was entirely composed of those companies of Gendarmes, embodied by Charles VII. and continued by Louis XI.; his infantry consisted partly of Swiss, hired of the Cantons, and partly of Gascons, armed and disciplined after the Swiss model. To these Louis XII. added a body of Germans, well known in the wars of

Italy by the name of the Black Bands. But neither of these monarchs made any account of the feudal militia, or ever had recourse to that military force, which they might have commanded, in virtue of the ancient institutions in their kingdom. Maximilian and Ferdinand, as soon as they began to act in Italy, employed similar instruments, and trusted the execution of their plans

Teach the Europeans the superior im-

entirely to mercenary troops. This innovation in the military system was quickly followed by another, which the custom of employing Swiss in the Italian wars was the occasion of introducing.

and discipline of the Swiss were different from portance of infantry in those of other European nations. During their long and violent struggles in defence of their liberties against the house of Austria, whose armies, like those of other considerable princes, consisted chiefly of heavy-armed cavalry, the Swiss found that their poverty, and the small number of gentlemen residing in their country, at that time barren and ill cultivated, put it out of their power to bring into the field any body of horse capable of facing the enemy. Necessity compelled them to place all their confidence in infantry; and in order to render it capable of withstanding the shock of cavalry, they gave the soldiers breast-plates and helmets as defensive armour; together with long spears, halberts, and heavy swords, as weapons of offence. They formed them into large battalions, ranged in deep and close array, so that they could present on every side a formidable front to the enemy.c The men at arms could make no impression on the solid strength of such a body. It repulsed the Austrians in all their attempts to conquer Swisserland. It broke the Burgundian Gendarmerie, which was scarcely inferior to that of France, either in number or reputation; and when first called to act in Italy, it bore down, by its irresistible force, every enemy that attempted to oppose These repeated proofs of the decisive effect of infantry, exhibited on such conspicuous occasions, restored that service to reputation, and gradually reestablished the opinion, which had been long exploded, of its superior importance in the operations of war. But the glory which the Swiss had acquired, having inspired them with such high ideas of their own prowess and consequence as frequently rendered them mutinous and insolent, the princes who employed them became weary of depending on the caprice of foreign mercenaries, and began to turn their attention towards the improvement of their national infantry.

The German powers having the command of men,

c Machiavel's Art of War, b. ii. chap. ii. p. 451.

National infantry established in Germany.

whom nature has endowed with that steady courage and persevering strength which forms them to be soldiers, soon modelled their troops in such a manner, that they vied with the Swiss both in discipline and valour.

The French monarchs, though more slowly, In France. and with greater difficulty, accustomed the impetuous spirit of their people to subordination and discipline; and were at such pains to render their national infantry respectable, that as early as the reign of Louis XII. several gentlemen of high rank had so far abandoned their ancient ideas, as to condescend to enter into that service.d

The Spaniards, whose situation made it In Spain. difficult to employ any other than their national troops in the southern parts of Italy, which was the chief scene of their operations in that country, not only adopted the Swiss discipline, but improved upon it, by mingling a proper number of soldiers, armed with heavy muskets, in their battalions; and thus formed that famous body of infantry, which, during a century and a half, was the admiration and terror of all Europe. The Italian states gradually diminished the number of their cavalry, and, in imitation of their more powerful neighbours, brought the strength of their armies to consist in foot soldiers. From this period the nations of Europe have carried on war with forces more adapted to every species of service, more capable of acting in every country, and better fitted both for making conquests, and for preserving them.

As their efforts in Italy led the people of The Italian Europe to these improvements in the art of wars occa-war, they gave them likewise the first idea of the expense with which it is accompanied, crease of the public when extensive or of long continuance, and revenues accustomed every nation to the burden of in Europe. such impositions as are necessary for sup-

While the feudal policy subsisted in full porting it.

d Brantome, tom. x. p. 18. Mem. de Fleuranges, 143.

vigour, while armies were composed of military vassals, called forth to attack some nieghbouring power, and to perform, in a short campaign, the services which they owed to their sovereign, the expense of war was extremely moderate. A small subsidy enabled a prince to begin and to finish his greatest military operations. But when Italy became the theatre on which the powers of Europe contended for superiority, the preparations requisite for such a distant expedition, the pay of armies kept constantly on foot, their subsistence in a foreign country, the sieges to be undertaken, and the towns to be defended, swelled the charges of war immensely, and, by creating demands unknown in less active times, multiplied taxes in every kingdom. The progress of ambition, however, was so rapid, and princes extended their operations so fast, that it was impossible at first to establish funds proportional to the increase of expense which these occasioned. When Charles VIII. invaded Naples, the sums requisite for carrying on that enterprise so far exceeded those which France had been accustomed to contribute for the support of government, that before he reached the frontiers of Italy, his treasury was exhausted, and the domestic resources, of which his extensive prerogative gave him the command, were at an end. As he durst not venture to lay any new imposition on his people, oppressed already with the weight of unusual burdens, the only expedient that remained was, to borrow of the Genoese as much money as might enable him to continue his march. But he could not obtain a sufficient sum, without consenting to pay annually the exorbitant interest of forty-two livres for every hundred that he received. We may observe the same disproportion between the efforts and revenues of other princes, his contemporaries. From this period, taxes went on increasing; and during the reign of Charles V. such sums were levied in every state, as would have appeared enormous at the close of the fifteenth century, and gradually prepared the

 $\mathbf{L}3$ 

e Mem. de Comines, lib. vii. c. 5. p. 440.

way for the still more exorbitant exactions of modern times.

The last transaction, previous to the reign The league of Charles V., that merits attention on acof Camcount of its influence upon the state of Eubrav another imrope, is the league of Cambray. To humble portant octhe republic of Venice, and to divide its tercurrence. ritories, was the object of all the powers who united in this confederacy. The civil constitution of Venice, established on a firm basis, had suffered no considerable alteration for several centuries; during which. the senate conducted its affairs by maxims of policy no less prudent than vigorous, and adhered to these with a uniform consistent spirit, which gave that commonwealth great advantage over other states, whose views and measures changed as often as the form of their government, or the persons who administered it. these unintermitted exertions of wisdom and valour, the Venetians enlarged the dominions of their commonwealth, until it became the most considerable power in Italy; while their extensive commerce, the useful and curious manufactures which they carried on, together with the large share which they had acquired of the lucrative commerce with the East, rendered Venice the most opulent state in Europe.

The motives of it.

The power of the Venetians was the object of terror to their Italian neighbours. Their wealth was viewed with envy by the greatest monarchs, who could not vie with many of their private citizens in the magnificence of their buildings, in the richness of their dress and furniture, or in splendour and elegance of living. Julius II., whose ambition was superior and his abilities equal to those of any pontiff who ever sat on the papal throne, conceived the idea of this league against the Venetians, and endeavoured, by applying to those passions which I have mentioned, to persuade other prifices to join in it. By working upon the fears of the Italian powers, and upon

f Heliani Oratio apud Goldastum in Polit. Imperial. p. 980.

the avarice of several monarchs beyond the Alps, he induced them, in concurrence with other causes, which it is not my province to explain, to form one of the most powerful confederacies that Europe had ever beheld, against those haughty republicans.

The rapid progress of the confederates.

The emperor, the king of France, the king of Aragon, the pope, were principals in the league of Cambray, to which almost all the princes of Italy acceded, the least considerable of them hoping for some share

in the spoils of a state, which they deemed to be now devoted to destruction. The Venetians might have diverted this storm, or have broken its force; but with a presumptuous rashness, to which there is nothing similar in the course of their history, they waited its approach. The impetuous valour of the French rendered ineffectual all their precautions for the safety of the republic; and the fatal battle of Ghiarraddada entirely ruined the army on which they relied for defence. Julius seized all the towns which they held in the ecclesiastical ter-Ferdinand reannexed the towns of which ritories. they had got possession on the coast of Calabria, to his Neapolitan dominions. Maximilian, at the head of a powerful army, advanced towards Venice on the one side. The French pushed their conquests on the other. The Venetians, surrounded by so many enemies, and left without one ally, sunk from the height of presumption to the depths of despair; abandoned all their territories on the continent, and shut themselves up in their capital, as their last refuge, and the only place which they hoped to preserve.

This rapid success, however, proved fatal to the confederacy. The members of it, whose union continued while they were engaged in seizing their prey, began to feel their ancient jealousies and animosities revive, as soon as they had a prospect of dividing it.

When the Venetians observed these symptoms of distrust and alienation, a ray of hope broke in upon them;

the spirit natural to their councils returned; they resumed such wisdom and firmness, as made some atonement for their former imprudence and dejection; they recovered part of the territory which they had lost; they appeased the pope and Ferdinand by well-timed concessions in their favour; and at length dissolved the confederacy, which had brought their commonwealth to the brink of ruin.

New objects of their policy and ambition. Julius, elated with beholding the effects of a league which he himself had planned, and imagining that nothing was too arduous for him to undertake, conceived the idea of expelling every foreign power out of Italy, and bent all the force of his mind towards

executing a scheme so well suited to his enterprising genius. He directed his first attack against the French, who, on many accounts, were more odious to the Italians than any of the foreigners who had acquired dominion in their country. By his activity and address, he prevailed on most of the powers, who had joined in the league of Cambray, to turn their arms against the king of France, their former ally; and engaged Henry VIII., who had lately ascended the throne of England, to favour their operations, by invading France. Louis XII. resisted all the efforts of this formidable and unexpected confederacy with undaunted fortitude. Hostilities were carried on, during several campaigns, in Italy, on the frontiers of Spain, and in Picardy, with alternate success. Exhausted, at length, by the variety as well as extent of his operations; unable to withstand a confederacy which brought against him superior force, conducted with wisdom and acting with perseverance, Louis found it necessary to conclude separate treaties of peace with his enemies; and the war terminated with the loss of every thing which the French had acquired in Italy, except the castle of Milan, and a few inconsiderable towns in that duchy.

By this the intercourse this busy period, and the different combina-

among the European nations increases. tions formed among powers hitherto little connected with each other, greatly increased that intercourse among the nations of Europe, which I have mentioned as one effect

of the events in the fifteenth century; while the greatness of the objects at which different nations aimed, the distant expeditions which they undertook, as well as the length and obstinacy of the contest in which they engaged, obliged them to exert themselves with a vigour and perseverance unknown in the preceding ages.

They are prepared for the transactions of the six-teenth century.

Those active scenes which the following history will exhibit, as well as the variety and importance of those transactions which distinguish the period to which it extends, are not to be ascribed solely to the ambition, to the abilities, or to the rivalship of Charles V. and of Francis I. The kingdoms of Europe

had arrived at such a degree of improvement in the internal administration of government, and princes had acquired such command of the national force which was to be exerted in foreign wars, that they were in a condition to enlarge the sphere of their operations, to multiply their claims and pretensions, and to increase the vigour of their efforts. Accordingly the sixteenth century opened with the certain prospect of its abounding in great and interesting events.

## VIEW

OF THE

## PROGRESS OF SOCIETY

IN

## EUROPE,

FROM THE

SUBVERSION OF THE ROMAN EMPIRE,

TO THE

BEGINNING OF THE SIXTEENTH CENTURY.

## SECTION III.

View of the Political Constitution of the principal States in Europe, at the commencement of the Sixteenth Century.

A considerable variety in the constitution of the different nations of Europe.

Having thus enumerated the principal causes and events, the influence of which was felt in every part of Europe, and contributed either to improve internal order and police in its various states, or to enlarge the sphere of their activity, by giving them more entire command of the force with which fo-

reign operations are carried on; nothing farther seems requisite for preparing my readers to enter, with full information, upon perusing the History of Charles V. but to give a view of the political constitution and form of civil government in each of the nations which acted any considerable part during that period. For as the institutions and events which I have endeavoured to illustrate, formed the people of Europe to reservable each other, and conducted them from barbarism to re-

finement, in the same path, and by nearly equal steps, there were other circumstances which occasioned a difference in their political establishments, and gave rise to those peculiar modes of government, which have produced such a variety in the character and genius of nations.

Necessary to explain the state of each when Charles V. began his reign. It is no less necessary to become acquainted with the latter, than to have contemplated the former. Without a distinct knowledge of the peculiar form and genius of civil government in each state, a great part of its transactions must appear altogether mysterious and inexplicable. The historians of particular countries, as they

seldom extended their views farther than to the amusement or instruction of their fellow-citizens, by whom they might presume that all their domestic customs and institutions were perfectly understood, have often neglected to descend into such details with respect to these, as are sufficient to convey to foreigners full light and information concerning the occurrences which they relate. But a history, which comprehends the transactions of so many different countries, would be extremely imperfect, without a previous survey of the constitution and political state of each. It is from his knowledge of these, that the reader must draw those principles, which will enable him to judge with discernment, and to decide with certainty concerning the conduct of nations.

A minute detail, however, of the peculiar forms and regulations in every country would lead to deductions of immeasurable length. To sketch out the great lines which distinguish and characterize each government, is all that the nature of my present work will admit of, and all that is necessary to illustrate the events which it records.

The state of Italy.

At the opening of the sixteenth century, the political aspect of Italy was extremely different from that of any other part of Europe. Instead of those extensive monarchies, which occupied the rest of the continent, that delightful country was parcelled out among many small states, each of which possessed sovereign and independent jurisdiction. The only monarchy in Italy was that of Naples. The dominion of the popes was of a peculiar species, to which there is nothing similar either in ancient or modern times. In Venice, Florence, and Genoa, a republican form of government was established. Milan was subject to sovereigns who had assumed no higher title than that of dukes.

The papal dignity the highest in Europe.

The pope was the first of these powers in dignity, and not the least considerable by the extent of his territories. In the primitive church, the jurisdiction of bishops was equal and co-ordinate. They derived, per-

haps, some degree of consideration from the dignity of the see in which they presided. They possessed, however, no real authority or pre-eminence, but what they

Origin and progress of the papal power. acquired by superior abilities, or superior sanctity. As Rome had so long been the seat of empire, and the capital of the world, its bishops were, on that account, entitled to respect; they received it; but, during se-

veral ages, they received, and even claimed, nothing more. From these humble beginnings, they advanced with such adventurous and well-directed ambition, that they established a spiritual dominion over the minds and sentiments of men, to which all Europe submitted with implicit obedience. Their claim of universal jurisdiction, as heads of the church, and the pretensions to infallibility in their decisions, as successors of St. Peter, are as chimerical as they are repugnant to the genius of the Christian religion. But on these foundations, the superstition and credulity of mankind enabled them to erect an amazing superstructure. In all ecclesiastical controversies, their decisions were received as the infallible oracles of truth. Nor was the plenitude of their power confined solely to what was spiritual; they de-

throned monarchs; disposed of crowns; absolved subjects from the obedience due to their sovereigns; and laid kingdoms under interdicts. There was not a state in Europe which had not been disquieted by their ambition. There was not a throne which they had not shaken; nor a prince, who did not tremble at their power.

The territories of the popes inadequate to risdiction.

Nothing was wanting to render this empire absolute, and to establish it on the ruins of all civil authority, but that the popes should have possessed such a degree of temsupport their spiritual juenforce their spiritual decrees. Happily for

mankind, at the time when their spiritual jurisdiction was most extensive and most revered, their secular dominion was extremely limited. They were powerful pontiffs, formidable at a distance; but they were petty princes, without any considerable domestic force. They had early endeavoured, indeed, to acquire territory by arts similar to those which they had employed in extending their spiritual jurisdiction. Under pretence of a donation from Constantine, and of another from Charlemagne, or his father Pepin, they attempted to take possession of some towns adjacent to Rome. But these donations were fictitious, and availed them little. The benefactions, for which they were indebted to the credulity of the Norman adventurers, who conquered Naples, and to the superstition of the countess Matilda, were real, and added ample domains to the Holy See.

rity in their own territoly limited.

But the power of the popes did not in-Their autho- crease in proportion to the extent of territory which they had acquired. In the dominions ries extreme- annexed to the Holy See, as well as in those subject to other princes in Italy, the sove-

reign of a state was far from having the command of the force which it contained. During the turbulence and confusion of the middle ages, the powerful nobility, or leaders of popular factions in Italy, had seized the government of different towns; and, after strengthening their fortifications, and taking a body of mercenaries into pay, they aspired at independence. The territory which the church had gained was filled with petty lords of this kind, who left the pope hardly the shadow of domestic authority.

purely spiritual, they ought to possess no property, and

It was circumscribed by the ambition of the Roman barons; As these usurpations almost annihilated the papal power in the greater part of the towns subject to the church, the Roman barons frequently disputed the authority of the popes, even in Rome itself. In the twelfth century, an opinion began to be propagated, "That, as the function of ecclesiastics was

to claim no temporal jurisdiction; but, according to the laudable example of their predecessors in the primitive church, should subsist wholly upon their tithes or upon the voluntary oblations of the people." This doctrine being addressed to men, who had beheld the scandalous manner in which the avarice and ambition of the clergy had prompted them to contend for wealth, and to exercise power, they listened to it with fond attention. The Roman barons, who had felt most sensibly the rigour of ecclesiastical oppression, adopted these sentiments with such ardour, that they set themselves instantly to shake off the yoke. They endeavoured to restore some image of their ancient liberty, by reviving the institution of the Roman senate, in which they vested supreme authority; committing the executive power sometimes to one chief senator, sometimes to two, and sometimes to a magistrate dignified with the name of The Patrician. The popes exerted themselves with vigour, in order to check this dangerous encroachment on their jurisdiction. One of them, finding all his endeavours ineffectual, was so much mortified, that extreme grief cut short his days. Another, having ventured to attack the senators at

<sup>&</sup>lt;sup>2</sup> Otto Frisigensis de Géstis Frider. Imp. lib. ii. cap. 10.

the head of some armed men, was mortally wounded in the fray.<sup>b</sup> During a considerable period, the power of the popes, before which the greatest monarchs in Europe trembled, was circumscribed within such narrow limits in their own capital, that they durst hardly exert any act of authority, without the permission and concurrence of the senate.

Encroachments were made upon the pa-And by the pal sovereignty, not only by the usurpations turbulence of the Roman nobility, but by the mutinous of the Roman people spirit of the people. During seventy years from A.D. of the fourteenth century, the popes fixed their residence in Avignon. The inhabit-1308 to A. D. 1377. ants of Rome, accustomed to consider themselves as the descendants of the people who had conquered the world, and had given laws to it, were too high-spirited to submit with patience to the delegated authority of those persons to whom the popes committed the government of the city. On many occasions, they opposed the execution of the papal mandates, and on the slightest appearance of innovation or oppression, they were ready to take arms in defence of their own immunities. Towards the middle of the fourteenth century, being instigated by Nicholas Rienzo, a man of low birth and a seditious spirit, but of popular eloquence, and an enterprising ambition, they drove all the nobility out of the city, established a democratical form of government, elected Rienzo tribune of the people, and invested him with extensive authority. But though the frantic proceedings of the tribune soon overtuned this new system; though the government of Rome was reinstated in its ancient form; yet every fresh attack contributed to weaker the papal jurisdiction; and the turbulence of the people concurred with the spirit of independence among the nobility, in circumscribing it more and more. Gre-

b Otto Frising. Chron. lib. vii. cap. 27. 31. Id. de Gest. Frid. lib. ibc. 27. Muratori Annali d'Italia, vol. ix. 398. 404.

gory VII. and other domineering pontiffs, accomplished those great things which rendered them so formidable to the emperors with whom they contended, not by the force of their arms, or by the extent of their power, but by the dread of their spiritual censures, and by the effect of their intrigues, which excited rivals, and called forth enemies against every prince whom they wished to depress or to destroy.

Alexander VI. and Julius II. render the popes considerable princes. Many attempts were made by the popes, not only to humble those usurpers, who lorded it over the cities in the ecclesiastical state, but to break the turbulent spirit of the Roman people. These were long unsuccessful. But at last Alexander VI. with a policy no less artful than flagitious, sub-

dued or extirpated most of the great Roman barons, and rendered the popes masters of their own dominions. The enterprising ambition of Julius II. added conquests of no inconsiderable value to the patrimony of St. Peter. Thus the popes, by degrees, became powerful temporal princes. Their territories, in the age of Charles V., were of greater extent than at present; their country seems to have been better cultivated, as well as more populous; and as they drew large contributions from every part of Europe, their revenues far exceeded those of the neighbouring powers, and rendered them capable of more sudden and vigorous efforts.

Defects in the nature of ecclesiastical dominion. The genius of the papal government, however, was better adapted to the exercise of spiritual dominion, than of temporal power. With respect to the former, all its maxims were steady and invariable. Every new pontiff adopted the plan of his predeby education and habit, ecclesiastics were so

cessor. By education and habit, ecclesiastics were so formed that the character of the individual was sunk

Murat. Script. Rerum Ital: vol. xiii. Vita de Cola di Rienzo, ap Murat. Antiq. Ital. vol. iii. p. 399, &c. Hist. de Nic. Rienzy, par M. de Boispreaux, p. 91, &c. in that of the profession; and the passions of the man were sacrificed to the interest and honour of the order. The hands which held the reins of administration might change; but the spirit which conducted them was always the same. While the measures of other governments fluctuated, and the objects at which they aimed varied, the church kept one end in view; and to this unrelaxing constancy of pursuit, it was indebted for its success in the boldest attempts ever made by human ambition.

But in their civil administration, the popes followed no such uniform or consistent plan. There, as in other governments, the character, the passions, and the interest of the person who had the supreme direction of affairs, occasioned a variation both in objects and measures. As few prelates reached the summit of ecclesiastical dignity until they were far advanced in life, a change of masters was more frequent in the papal dominions than in other states, and the political system was, of course, less stable and permanent. Every pope was eager to make the most of the short period during which he had the prospect of enjoying power, in order to aggrandize his own family, and to attain his private ends; and it was often the first business of his successor to undo all that he had done, and to overturn what he had established.

As ecclesiastics were trained to pacific arts, and early initiated in the mysteries of that policy by which the court of Rome extended or supported its spiritual dominion, the popes, in the conduct of their temporal affairs, were apt to follow the same maxims, and in all their measures, were more ready to employ the refinements of intrigue, than the force of arms. It was in the papal court that address and subtlety in negotiation became a science; and during the sixteenth century, Rome was considered as the school in which it might be best acquired.

As the decorum of their ecclesiastical character prevented the popes from placing themselves at the head of their armies, or from taking the command, in person, of the military force in their dominions, they were afraid to arm their subjects; and in all their operations, whether offensive or defensive, they trusted entirely to mercenary troops.

As their power and dominions could not descend to their posterity, the popes were less solicitous than other princes to form or to encourage schemes of public utility and improvement. Their tenure was only for a short life; present advantage was what they chiefly studied: to squeeze and to amass, rather than to ameliorate, was their object. They erected, perhaps, some work of ostentation, to remain as a monument of their pontificate; they found it necessary, at some times, to establish useful institutions, in order to sooth and silence the turbulent populace of Rome; but plans of general benefit to their subjects, framed with a view to futurity, were rarely objects of attention in the papal policy. The patrimony of St. Peter was worse governed than any part of Europe; and though a generous pontiff might suspend for a little, or counteract the effects of those vices which are peculiar to the administration of ecclesiastics, the disease not only remained without remedy, but has gone on increasing from age to age; and the decline of the state has kept pace with its progress.

The popes derive some advantages from the union of their spiritual and temporal authority.

One circumstance farther concerning the papal government is so singular as to merit attention. As the spiritual supremacy and temporal power were united in one person, and uniformly aided each other in their operations, they became so blended together, that it was difficult to separate them, even in imagination. The potentates, who found it necessary to oppose the measures which the popes pursued as temporal princes, could

not easily divest themselves of the reverence which they imagined to be due to them as heads of the church, and vicars of Jesus Christ. It was with reluctance that they could be brought to a rupture with the head of the church; they were unwilling to push their operations against him to extremity; they listened eagerly to the first overtures of accommodation, and were anxious to procure it almost upon any terms. Their consciousness of this encouraged the enterprising pontiffs, who filled the papal throne about the beginning of the sixteenth century, to engage in schemes seemingly the most extravagant. They trusted, that if their temporal power was not sufficient to carry them through with success, the respect paid to their spiritual dignity would enable them to extricate themselves with facility and with honour.d But when popes came to take part more frequently in the contests among princes, and to engage as principals or auxiliaries in every war kindled in Europe, this veneration for their sacred character began to abate; and striking instances will occur in the following history of its being almost totally extinct.

Constitution of the republic of Venice, next to the Papal See, was most connected with the rest of Europe. The rise of that commonwealth, during the inroads of

d The manner in which Louis XII. of France undertook and carried on war against Julius II. remarkably illustrates this observation. Louis solemnly consulted the clergy of France, whether it was lawful to take arms against' a pope who had wantonly kindled war in Europe, and whom neither the faith of treaties, nor gratitude for favours received, nor the decorum of his character, could restrain from the most violent actions to which the lust of power prompts ambitious princes. Though his clergy authorized the war, yet Anne of Bretagne, his queen, entertained scruples with regard to the lawfulness of it. The king himself, from some superstition of the same kind, carried it on faintly; and, upon every fresh advantage, renewed his propositions of peace. Mezeray, Hist. Te France, fol. edit. 1685, tom. i. 852. I shall produce another proof of this reverence for the papal character still more striking. Guicciardini, the most sagacious, perhaps, of all modern historians, and the boldest in painting the vices and ambition of the popes, represents the death of Migliau, a Spanish officer, who was killed during the siege of Maples, as a punishment inflicted on him by Heaven, on account of his having opposed the setting of Clement VII. at liberty. Guic. Historia d'Italia. Genev. 1645, vol. ii. lib. 18, p. 467,

with its rise and progress. the Huns in the fifth century; the singular situation of its capital in the small isles of

form of its civil constitution, are generally known. If we view the Venetian government as calculated for the order of nobles alone, its institutions may be pronounced excellent; the deliberate, legislative, and executive powers, are so admirably distributed and adjusted, that it must be regarded as a perfect model of political wisdom. But if we consider it as formed for a numerous body of people subject to its jurisdiction, it will appear a rigid and partial aristocracy, which lodges all power in the hands of a few members of the community, while it degrades and oppresses the rest.

Defects in its government, particularly with respect to its military operations. The spirit of government, in a commonwealth of this species, was, of course, timid and jealous. The Venetian nobles distrustedtheir own subjects, and were afraid of allowing them the use of arms. They encouraged among them arts of industry and commerce; they employed them in manufactures and in navigation; but never ad-

mitted them into the troops which the state kept in its pay. The military force of the republic consisted entirely of foreign mercenaries. The command of these was never intrusted to noble Venetians, lest they should acquire such influence over the army, as might endanger the public liberty; or become accustomed to the exercise of such power, as would make them unwilling to return to the condition of private citizens. A soldier of fortune was placed at the head of the armies of the commonwealth; and to obtain that honour, was the great object of the Italian Condottieri, or leaders of bands, who, in the fifteenth and sixteenth centuries, made a trade of war, and raised and hired out soldiers to different states. But the same suspicious policy which induced the Venetians to employ these adventurers, prevented their placing entire confidence in Two noblemen, appointed by the senate, accompanied their army, when it took the field, with the appellation of *Proveditori*, and, like the field-deputies of the Dutch republic in latter times, observed all the motions of the general, and checked and controlled him in all his operations.

A commonwealth, with such civil and military institutions, was not formed to make conquests. While its subjects were disarmed, and its nobles excluded from military command, it carried on its warlike enterprises with great disadvantage. This ought to have taught the Venetians to rest satisfied with making self-preservation, and the enjoyment of domestic security, the objects of their policy. But republics are apt to be seduced by the spirit of ambition as well as kings. When the Venetians so far forgot the interior defects in their government as to aim at extensive conquests, the fatal blow which they received in the war excited by the league of Cambray, convinced them of the imprudence and danger of making violent efforts in opposition to the genius and tendency of their constitution.

Excellence of its naval institutions.

It is not, however, by its military, but by its naval and commercial power, that the importance of the Venetian commonwealth must be estimated. The latter constituted the real

force and nerves of the state. The jealousy of government did not extend to this department. Nothing was apprehended from this quarter that could prove formidable to liberty. The senate encouraged the nobles to trade, and to serve on board the fleet. They became merchants and admirals. They increased the wealth of their country by their industry. They added to its dominions by the valour with which they conducted its naval armaments.

The extent of its commerce.

Commerce was an inexhaustible source of opulence to the Venetians. All the nations in Europe depended upon them, not only for the commodities of the East, but for

various manufactures fabricated by them alone or

finished with a dexterity and elegance unknown in other countries. From this extensive commerce the state derived such immense supplies, as concealed those vices in its constitution which I have mentioned; and enabled to keep on foot such armies, as were not only an overmatch for the force which any of its neighbours could bring into the field, but were sufficient to contend, for some time, with the powerful monarchs beyond the Alps. During its struggles with the princes united against it by the league of Cambray, the republic levied sums which, even in the present age, would be deemed considerable; and while the king of France paid the exorbitant interest which I have mentioned for the money advanced to him, and the emperor, eager to borrow, but destitute of credit, was known by the name of Maximilian the Moneyless, the Venetians raised whatever sums they pleased, at the moderate premium of five in the hundred.

The constitution of

The constitution of Florence was perfectly the reverse of the Venetian. It partook as much of democratical turbulence and licentiousness, as the other of aristocratical

rigour. Florence, however, was a commercial, not a military democracy. The nature of its institutions was favourable to commerce, and the genius of the people was turned towards it. The vast wealth which the family of Medici had acquired by trade, together with the magnificence, the generosity, and the virtue of the first Cosmo, gave him such an ascendant over the affections as well as the councils of his countrymen, that though the forms of popular government were preserved, though the various departments of administration were filled by magistrates distinguished by the ancient names, and elected in the usual manner, he was in reality the head of the commonwealth; and in the station of a private citizen, he possessed supreme authority. Cosmo transmitted a considerable

e Hist, de la Ligue fait à Cambray, par M. l'Abbé du Bos, lío, v. Sandi Storia Civil Veneziana, lib. viii. c. 16. p. 891, &c.

degree of this power to his descendants; and during the greater part of the fifteenth century, the political state of Florence was extremely singular. The appearance of republican government subsisted, the people were passionately attached to it, and on some occasions contended warmly for their privileges, and yet they permitted a single family to assume the direction of their affairs, almost as absolutely as if it had been formally invested with sovereign power. The jealousy of the Medici concurred with the commercial spirit of the Florentines, in putting the military force of the republic upon the same footing with that of the other Italian states. The troops, which the Florentines employed in their wars, consisted almost entirely of mercenary soldiers, furnished by the Condottieri, or leaders of bands, whom they took into their pay.

The constitution of the kingdom of Naples. In the kingdom of Naples, to which the sovereignty of the island of Sicily was annexed, the feudal government was established in the same form, and with the same defects, as in the other nations of Europe. The frequent and violent revolutions which

happened in that monarchy had considerably increased these defects, and rendered them more intolerable. The succession to the crown of Naples had been so often interrupted or altered, and so many princes of foreign blood had, at different periods, obtained possession of the throne, that the Neapolitan nobility had lost, in a great measure, that attachment to the family of their sovereigns, as well as that reverence for their persons, which, in other feudal kingdoms, contributed to set some bounds to the encroachments of the barons upon the royal prerogative and power. At the same time, the different pretenders to the crown, being obliged to court the barons who adhered to them, and on whose support they depended for the success of their claims, they augmented their privileges by liberal concessions, and connived at their boldest usurpations. Even when seated on the throne, it was dangerous for a prince, who held his sceptre by a disputed title, to venture on any step towards extending his own power, or circumscribing that of the nobles.

From all these causes, the kingdom of Naples was the most turbulent of any in Europe, and the authority of its monarchs the least extensive. Though Ferdinand I., who began his reign in the year 1468, attempted to break the power of the aristocracy; though his son Alphonso, that he might crush it at once by cutting off the leaders of greatest reputation and influence among the Neapolitan barons, ventured to commit one of the most perfidious and cruel actions recorded in history; the order of nobles was nevertheless more exasperated than humbled by their measures. The resentment which these outrages excited was so violent, and the power of the malcontent nobles was still so formidable, that to these may be ascribed, in a great degree, the ease and rapidity with which Charles VIII. conquered the kingdom of Naples.

The event that gave rise to the violent State of contests concerning the succession to the the dispute crown of Naples and Sicily, which brought concerning so many calamities upon these kingdoms, the right of succession happened in the thirteenth century. Upon to the crown. the death of the emperor Frederic II., Manfred, his natural son, aspiring to the Neapolitan throne, murdered his brother the emperor Conrad (if we may believe contemporary historians), and by that crime obtained possession of it.h The popes, from their implacable enmity to the house of Swabia, not only refused to recognise Manfred's title. but endeavoured to excite against him some rival capable of wresting the sceptre out of his hand. Charles, count of Anjou, the brother of St. Louis, king of France, undertook this; and he received from the popes the

f Giannone, book xxviii. chap. 2. vol. ii. p. 410, &c.
s Giannone, ibid. p. 414.
h Struv. Corp. Hist, Germ. i. 481. Giannone, book xviii. ch. v.

investiture of the kingdom of Naples and Sicily as a fief held of the Holy See. The count of Anjou's efforts were crowned with success; Manfred fell in battle; and he took possession of the vacant throne. But soon after, Charles sullied the glory which he had acquired, by the injustice and cruelty with which he put to death, by the hands of the executioner, Conradin, the last prince of the house of Swabia, and the rightful heir of the Neapolitan crown. That gallant young prince asserted his title, to the last, with a courage worthy of a better fate. On the scaffold he declared Peter, at that time prince, and soon after king of Aragon, who had married Manfred's only daughter, his heir; and throwing his glove among the people, he entreated that it might be carried to Peter, as the symbol by which he conveyed all his rights to him. The desire of avenging the insult offered to royalty by the death of Conradin, concurred with his own ambition in prompting Peter to take arms in support of the title which he had acquired. From that period, during almost two centuries, the houses of Aragon and Anjou contended for the crown of Naples. Amidst a succession of revolutions more rapid, as well as of crimes more atrocious, than what occur in the history of almost any other kingdom, monarchs, sometimes of the Aragonese line, and sometimes of the Angevin, were seated on the throne. At length the princes of the house of Aragon obtained such firm possession of this long disputed inheritance, that they transmitted it quietly to a bastard branch of their family.k

The race of the Angevin kings, however,
Pretensions of the
French and
Spanish monarclis.

The race of the Angevin kings, however,
was not extinct; nor had they relinquished their title to the Neapolitan crown. The count of Maine and Provence, the heir of this family, conveyed all his rights and pretensions to Louis XI. and to his successors.

Charles VIII., as I have already related, crossed the

Giannone, book xix. ch. 4. § 2. k Giannone, book xxvi. ch. 2.

A.D. 1494. Alps at the head of a powerful army, in order to prosecute his claim with a degree of vigour far superior to that which the princes from whom he derived it had been capable of exerting. The rapid progress of his arms in Italy, as well as the short time during which he enjoyed the fruits of his success, have already been mentioned, and are well known. Frederic, the heir of the illegitimate branch of the Aragonese family, soon recovered the throne of which Charles had dispossessed him. Louis XII. and Ferdinand of Aragon united against this prince, whom both, though for different reasons, considered as a usurper, and agreed to divide his dominions between them. Frederic, unable to resist the com-A.D. 1501. bined monarchs, each of whom was far his superior in power, resigned his sceptre. Louis and Ferdinand, though they had concurred in making the conquest, differed about the division of it, and from allies became enemies. But Gonsalvo de Cordova, partly by the exertion of such military talents as gave him a just title to the appellation of the Great Captain, which the Spanish historians have bestowed upon him, and partly by such shameless and frequent violations of the most solemn engagements as leave an indelible stain on his memory, stripped the French of all that they possessed in the Neapolitan dominions, and secured the peaceable possession of them to his master. These, together with his other kingdoms, Ferdinand transmitted to his grandson Charles V., whose right to possess them, if not altogether incontrovertible, seems, at least, to be as well founded as that which the kings of France set up in opposition to it.1

State of the duchy of Milan, and the right of succession to it.

There is nothing in the political constitution or interior government of the duchy of Milan so remarkable as to require a particular explanation. But as the right of succession to that fertile province was the

<sup>&</sup>lt;sup>1</sup> Droits de Rois de France au Royaume de Sicile. Mem. de Comin. edit. de Fresnoy, tom. iv. part ii. p. 5.

cause or the pretext of almost all the wars carried on in Italy during the reign of Charles V., it is necessary to trace these disputes to their source, and to inquire into the pretensions of the various competitors.

During the long and fierce contests excited Rise and in Italy by the violence of the Guelf and progress of Ghibelline factions, the family of Visconti the disrose to great eminence among their fellowputes concerning this. citizens of Milan. As the Visconti had adhered uniformly to the Ghibelline or imperial interest, they, by way of recompense, received, from one emperor, the dignity of perpetual A. D. 1354. vicars of the empire in Italy: they were created by another, dukes of Milan; and, together with that title, the possessions of the city A. D. 1395. and its territories was bestowed upon them as an hereditary fief. John, king of France, among other expedients for raising money, which the calamities of his reign obliged him to employ, condescended to give one of his daughters in marriage to John Galeazzo Visconti, the first duke of Milan, from whom he had received considerable sums. Valentine Visconti. one of the children of this marriage, married her cousin, Louis, duke of Orleans, the only brother of Charles In their marriage-contract, which the pope confirmed, it was stipulated, that, upon failure of heirs male in the family of Visconti, the duchy of Milan should descend to the posterity of Valentine and the duke of Orleans. That event took place. In the year 1447, Philip Maria, the last prince of the ducal family of Visconti, died. Various competitors claimed the succession. Charles, duke of Orleans, pleaded his right to it, founded on the marriage-contract of his mother Valentine Visconti. Alfonso, king of Naples, claimed it in consequence of a will made by Philip Maria in his favour. The emperor contended, that upon the extinction of male issue in the family of Visconti, the

m Petrarch Epist. ap. Struv. Corp. i. 625.

n Leibnit. Cod. Jur. Gent. Diplom. vol. i. 257.

fief returned to the superior lord, and ought to be reannexed to the empire. The people of Milan, smitten with the love of liberty which in that age prevailed among the Italian states, declared against the dominion of any master, and established a republican form

of government. But during the struggle among so many competitors, the prize for which they contended was seized by one from whom none of them apprehended any danger. Francis Sforza, the natural son of Jacomuzzo Sforza, whom his courage and abilities had elevated from the rank of a peasant to be one of the most eminent and powerful of the Italian Condottieri, having succeeded his father in the command of the adventurers who followed his standard, had married a natural daughter of the last duke of Milan. Upon this shadow of a title Francis founded his pretensions to the duchy, which he supported with such talents and valour, as placed him at last on the ducal throne. The virtues as well as abilities with which he governed inducing his subjects to forget the defects in his title, he transmitted his dominions quietly to his son, from whom they descended to his grandson. He was murdered by his grand-uncle Ludovico, surnamed the Moor, who took possession of the duchy; and his right to it was confirmed by the investiture of the emperor Maximilian in the year 1494.º

Louis XI., who took pleasure in depressing the princes of the blood, and who admired the political abilities of Francis Sforza, would not permit the duke of Orleans to take any step in prosecution of his right to the duchy of Milan. Ludovico the Moor kept up such a close connexton with Charles VIII. that, during the greater part of his reign, the claim of the family of Orleans continued to lie dormant. But when the crown of France devolved on Louis XII. duke of Orleans, he instantly asserted the rights-of his family with the

º Ripalin, Hist. Mediol. lib. vi. 654. ap. Struv. Corp. i. 930. Du Mont Corps Diplom. tom. iii. p. ii. 333. ibid.

ardour which it was natural to expect, and marched at the head of a powerful army to support them. Ludovico Sforza, incapable of contending with such a rival, was stripped of all his dominions in the space of a few days. The king, clad in the ducal robes, entered Milan in triumph; and soon after, Ludovico, having been betrayed by the Swiss in his pay, was sent a prisoner into France, and shut up in the castle of Loches, where he lay unpitted during the remainder of his days. In consequence of one of the singular revolutions which occur so frequently in the history of the Milanese, his son Maximilian Sforza was placed on the ducal throne, of which he kept possession during A.D. 1512. Francis I. was too high-spirited and en-

terprising tamely to relinquish his title. As soon as he was seated upon the throne he prepared to invade the Milanese; and his right of succession to it appears, from this detail, to have been more natural and more

just than that of any other competitor.

It is unnecessary to enter into any detail with respect to the form of government in Genoa, Parma, Modena, and the other inferior states of Italy. Their names, indeed, will often occur in the following history. But the power of these states themselves was so inconsiderable, that their fate depended little upon their own efforts; and the frequent revolutions which they underwent, were brought about rather by the operations of the princes who attacked or defended them, than by any thing peculiar in their internal constitution.

The constitution and government of Spain.

Of the great kingdoms on this side of the Alps, Spain is one of the most considerable; and as it was the hereditary domain of Charles V. as well as the chief source of his power and wealth, a distinct knowledge of its political constitution is of capital impor-

tance towards understanding the transactions of his

reign.

Conquered by the Vandals. The Vandals and Goths, who overturned the Roman power in Spain, established a form of government in that country, and introduced customs and laws, perfectly similar

to those which were established in the rest of Europe by the other victorious tribes which acquired settlements there. For some time society advanced, among the new inhabitants of Spain, by the same steps, and

A. D. 712. seemed to hold the same course, as in other European nations. To this progress a sudden stop was put by the invasion of the Saracens or

And by the Moors. Moors from Africa. The Goths could not withstand the efforts of their enthusiastic valour, which subdued the greatest part of

Spain with the same impetuous rapidity that distinguishes all the operations of their arms. The conquerors introduced into the country in which they settled the Mahometan religion, the Arabic language, the manners of the East, together with that taste for the arts, and that love of elegance and splendour, which the caliphs had begun to cultivate among their subjects.

The Christians gradually recover dominion in Spain.

Such Gothic nobles as disdained to submit to the Moorish yoke fled for refuge to the inaccessible mountains of Asturias. There they comforted themselves with enjoying the exercise of the Christian religion, and with maintaining the authority of their ancient

laws. Being joined by many of the boldest and most warlike among their countrymen, they sallied out upon the adjacent settlements of the Moors in small parties; but venturing only upon short excursions at first, they were satisfied with plunder and revenge, without thinking of conquest. By degrees their strength increased, their views enlarged, a regular government was established among them, and they began to aim at extending their territories. While they pushed on their attacks with the unremitting ardour excited by zeal for religion, by the desire of vengeance, and by the hope

of rescuing their country from oppression; while they conducted their operations with the courage natural to men who had no other occupation but war, and who were strangers to all the arts which corrupt or enfeeble the mind; the Moors gradually lost many of the advantages to which they had been indebted for their first success. They threw off all dependance to the caliphs;p they neglected to preserve a close connexion with their countrymen in Africa; their empire in Spain was split into many small kingdoms; the arts which they cultivated, together with the luxury to which these gave rise, relaxed, in some measure, the force of their military institutions, and abated the vigour of their warlike spirit. The Moors, however, continued still to be a gallant people, and possessed great resources. According to the magnificent style of the Spanish historians, eight centuries of almost uninterrupted war elapsed, and three thousand seven hundred battles A. D. 1492. were fought, before the last of the Moorish kingdoms in Spain submitted to the Christian arms.

The union of its various king-

As the Christians made their conquests upon the Mahometans at various periods and under different leaders, each formed the territory which he had wrested from the common enemy into an independent state. Spain

was divided into almost as many separate kingdoms as it contained provinces; in each city of note, a petty monarch established his throne, and assumed all the ensigns of royalty. In a series of years, however, by the usual events of intermarriages, or succession, or conquest, all these inferior principalities were annexed to the more powerful kingdoms of Castile and of Aragon. At length, by the fortunate marriage of Ferdinand and Isabella, the former the hereditary monarch of Aragon, and the latter raised to the throne of Castile by the affection of her subjects, all the Spanish crowns were united, and descended in the same line.

Jos. Sim. Assemanni Histor. Ital. Scriptores, vol. iii. p. 135.

Their ancient customs and laws preserved amidst all their revolutions:

From this period, the political constitution of Spain began to assume a regular and uniform appearance; the genius of its government may be delineated, and the progress of its daws and manners may be traced, with certainty. Notwithstanding the singular revolution which the invasion of the Moors occasioned in Spain, and the peculiarity of its

fate in being so long subject to the Mahometan yoke, the customs introduced by the Vandals and Goths had taken such deep root, and were so thoroughly incorporated with the frame of its government, that in every province which the Christians recovered from the Moors, we find the condition of individuals, as well as the political constitution, nearly the same as in other nations of Europe. Lands were held by the same te-

Which renders their state in some degree similar to that of other nations of Europe.

Europe. Lands were held by the same tenure; justice was dispensed in the same form; the same privileges were claimed by the nobility; and the same power exercised by the cortes, or general assembly of the kingdom. Several circumstances contributed to secure this permanence of the feudal institutions in Spain, notwithstanding the conquest of the Moors, which seemed to have overturned them. Such of the Spaniards as

preserved their independence, adhered to their ancient customs, not only from attachment to them, but out of antipathy to the Moors, to whose ideas concerning property and government these customs were totally repugnant. Even among the Christians, who submitted to the Moorish conquerors, and consented to become their subjects, ancient customs were not entirely abolished. They were permitted to retain their religion, their laws concerning private property, their forms of administering justice, and their mode of levying taxes. The followers of Mahomet are the only enthusiasts who have united the spirit of toleration with zeal for making proselytes, and who, at the same time that they took arms to propagate the doctrine of their prophet, permitted

such as would not embrace it to adhere to their own tenets, and to practise their own rites. To this peculiarity in the genius of the Mahometan religion, as well as to the desire which the Moors had of reconciling the Christians to their yoke, it was owing that the ancient manners and laws in Spain survived the violent shock of a conquest, and were permitted to subsist, notwithstanding the introduction of a new religion and a new form of government into that country. It is obvious, from all these particulars, that the Christians must have found it extremely easy to re-establish manners and government on their ancient foundations, in those provinces of Spain which they wrested successively from the Moors. A considerable part of the people retained such a fondness for the customs, and such a reverence for the laws, of their ancestors, that, wishing to see them completely restored, they were not only willing, but eager to resume the former, and to recognise the authority of the latter.

Certain peculiarities in their constitution and laws.

But though the feudal form of government, with all the institutions which characterize it, was thus preserved entire in Castile and Aragon, as well as in all the kingdoms which depended on these crowns, there were certain peculiarities in their political constitu-

The prerogative more limited, and the immunities of

the people more extensive.

tions, which distinguish them from those of any other country in Europe. The royal prerogative, extremely limited in every feudal kingdom, was circumscribed, in Spain, within such narrow bounds, as reduced the power of the sovereign almost to nothing. The privileges of the nobility were great in proportion, and extended so far, as to border on absolute independence. The immunities of the cities were likewise greater than in other feudal

kingdoms; they possessed considerable influence in the cortes, and they aspired at obtaining more. state of society, in which the political machine was so ill-adjusted, and the several members of the legislature

so improperly balanced, produced internal disorders in the kingdoms of Spain, which rose beyond the pitch of turbulence and anarchy usual under the feudal government. The whole tenor of the Spanish history confirms the truth of this observation; and when the mutinous spirit, to which the genius of their policy gave birth and vigour, was no longer restrained and overawed by the immediate dread of the Moorish arms, it broke out into more frequent insurrections against the government of their princes, as well as more outrageous insults on their dignity, than occur in the annals of any other country. These were accompanied, at some times, with more liberal sentiments concerning the rights of the people, at other times, with more elevated notions concerning the privileges of the nobles, than were common in other nations.

In the principality of Catalonia, which was Instances annexed to the kingdom of Aragon, the imof this. patience of the people to obtain the redress of their grievances having prompted them to take arms against their sovereign John II., they, by a solemn deed, recalled the oath of allegiance which they had sworn to him, declared him and his posterity to be unworthy of the throne, p and endeavoured to establish a republican form of government, in order to secure the perpetual enjoyment of that liberty after which they aspired. I Nearly about the same period, the indignation of the Castilian nobility against the weak and flagitious administration of Henry IV. having led them to combine against him, they arrogated, as one of the privileges belonging to their order, the right of trying and of passing sentence on their sovereign. That the exercise of this power might be as public and solemn as the pretension to it was bold, they summoned all the nobility of their party to meet

P Zurita Annales de Arag. tom. iv. 113. 115, &c.

q Ferreras Hist. d'Espago, tom. vk. p. 92. P. Orleans Revol. d'Espagne, tom. iii. p. 155. L. Marinæus Siculus de Reb. Hr.pan. apud Schotti Script. Hispan. fol. 429.

at Avila; a spacious theatre was erected in A. D. 1465. a plain, without the walls of the town; an image representing the king was seated on a throne, clad in royal robes, with a crown on its head, a sceptre in its hand, and the sword of justice by its side. accusation against the king was read, and the sentence of deposition was pronounced, in presence of a numerous assembly. At the close of the first article of the charge, the archbishop of Toledo advanced, and tore the crown from the head of the image; at the close of the second, the conde de Placentia snatched the sword of justice from its side; at the close of the third, the conde de Beneventè wrested the sceptre from its hand; at the close of the last, Don Diego Lopes de Stuniga tumbled it headlong from the throne. At the same instant, Don Alfonso, Henry's brother, was proclaimed king of Castile and Leon in his stead."

The most daring leaders of faction would not have ventured on these measures, nor have conducted them with such public ceremony, if the sentiments of the people concerning the royal dignity had not been so formed by the laws and policy to which they were accustomed, both in Castile and Catalonia, as prepared them to approve of such extraordinary proceedings,

or acquiesce in them.

tution and government of Aragon.

In Aragon, the form of government was The consti- monarchical, but the genius and maxims of it were purely republican. The kings, who were long elective, retained only the shadow of power; the real exercise of it was in the

cortes or parliament of the kingdom. This supreme assembly was composed of four different arms or members. The nobility of the first rank. The equestrian order, or nobility of the second class. The representatives of the cities and towns, whose right to a place in the cortes, if we may give credit to the historians of Aragon, was coëval with the constitution. The ecclesiastical order, composed of the dignitaries of the

r Marian. Hist. lib. xxiii. c. 9.

church, together with the representatives of the inferior clergy. No law could pass in this assembly without the assent of every single member who had a right to vote. Without the permission of the cortes, no tax could be imposed; no war could be declared; no peace could be concluded; no money could be coined; nor could any alteration be made in the current specie. The power of reviewing the proceedings of all inferior courts, the privilege of inspecting every department of administration, and the right of redressing all grievances, belonging to the cortes. Nor did those who conceived themselves to be aggrieved address the cortes in the humble tone of supplicants, and petition for redress; they demanded it as the birthright of freemen, and required the guardians of their liberty to decide with respect to the points which they laid before them.\* This sovereign court was held, during several centuries, every year; but, in consequence of a regulation introduced about the beginning of the fourteenth century, it was convoked from that period only once in two years. After it was assembled, the king had no right to prorogue or dissolve it without its own consent; and the session continued forty days.

Office and jurisdiction of the Justiza.

Not satisfied with having erected such formidable barriers against the encroachments of the royal prerogative, nor willing to commit the sole guardianship of their liberties entirely to the vigilance and autho-

rity of an assembly, similar to the Diets, States-general, and Parliaments, in which the other feudal nations have placed so much confidence, the Aragonese had recourse to an institution peculiar to themselves, and elected a Juzziza, or supreme judge. This magistrate, whose office bore some resemblance to that of the

Forma de Celebrar. Cortes in Aragon. por Geron Martel.

Martel. ibid. p. 2.

<sup>&</sup>quot; Hier. Blanca Comment. Arr. Aragon. ap. Schot. Script. Hispan. vol. iii. p. 750.

\* Martel Forma de Celebr. p. 2.

Hier. Blanca Comment. 763.

Ephori in ancient Sparta, acted as the protector of the people, and the comptroller of the prince. The person of the justiza was sacred, his power and jurisdiction almost unbounded. He was the supreme interpreter of the laws. Not only inferior judges, but the kings themselves, were bound to consult him in every doubtful case, and to receive his responses with implicit deference.<sup>2</sup> An appeal lay to him from the royal judges, as well as from those appointed by the barons within their respective territories. Even when no appeal was made to him, he could interpose by his own authority, prohibit the ordinary judge to proceed, take immediate cognizance of the cause himself, and remove the party accused to the Manifestation, or prison of the state, to which no person had access but by his permission. His power was exerted with no less vigour and effect in superintending the administration of government, than in regulating the course of justice. It was the prerogative of the justiza to inspect the conduct of the king. He had a title to review all the royal proclamations and patents, and to declare whether or not they were agreeable to law, and ought to be carried into execution. He, by his sole authority, could exclude any of the king's ministers from the conduct of affairs, and call them to answer for their maladministration. He himself was accountable to the cortes only, for the manner in which he discharged the duties of this high office; and performed functions of the greatest importance that could be committed to a subject. [HH]

The regal power circumscribed within narrow limits.

It is evident, from a bare enumeration of the privileges of the Aragonese cortes, as well as of the rights belonging to the justiza, that a very small, portion of power remained in the hands of the king. The Aragonese seem to have been solicitous that their monarchs should know and feel this state of imparchs should know and feel this state of imparch should know and feel this state of imparchs should know and feel this state of imparchs should know and feel this state of imparchs should be should be

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<sup>&</sup>lt;sup>a</sup> Blanca has preserved two responses of the justiza to James II., who reigned towards the close of the thirteenth century. Blanca, 743. [HH] Note XXXI. <sup>z</sup> Hier. Blanca Comment. p. 747. 755.

potence to which they were reduced. Even in swearing allegiance to their sovereign, an act which ought naturally to be accompanied with professions of submission and respect, they devised an oath in such a form as to remind him of his dependance on his sub-"We," said the justiza to the king, in name of his high-spirited barons, "who are each of us as good, and who are altogether more powerful than you, promise obedience to your government, if you maintain our rights and liberties; but if not, not." Conformably to this oath, they established it as a fundamental article in their constitution, that if the king should violate their rights and privileges, it was lawful for the people to disclaim him as their sovereign, and to elect another, even though a heathen, in his place." The attachment of the Aragonese to this singular constitution of government was extreme, and their respect for it approached to superstitious veneration. [II] In the preamble to one of their laws, they declare, that such was the barrenness of their country, and the poverty of the inhabitants, that, if it were not on account of the liberties by which they were distinguished from other nations, the people would abandon it, and go in quest of a settlement to some more fruitful region.b

Constitution and government of Castile. In Castile there were not such peculiarities in the form of government as to establish any remarkable distinction between it and that of the other European nations. The executive part of government was committed to the king, but with a prerogative extremely limited.

The legislative authority resided in the cortes, which was composed of the nobility, the dignified ecclesiastics, and the representatives of the cities. The assembly of the cortes in Castile was very ancient, and seems to have been almost coëval with the constitution. The members of the three different orders, who had a right

<sup>&</sup>lt;sup>a</sup> Hier. Blanca Comment. 720. [II] Note XXXII. 6 <sup>b</sup> Hier. Blanca Com. p. 751.

of suffrage, met in one place, and deliberated as one collective body; the decisions of which were regulated by the sentiments of the majority. The right of imposing taxes, of enacting laws, and of redressing grievances, belonged to this assembly; and, in order to secure the assent of the king to such statutes and regulations as were deemed salutary or beneficial to the kingdom, it was usual in the cortes to take no step towards granting money, until all business relative to the public welfare was concluded. The representatives of cities seem to have obtained a seat very early in the cortes of Castile, and soon acquired such influence and credit as were very uncommon at a period when the splendour and pre-eminence of the nobility had eclipsed or depressed all other orders of men. The number of members from cities bore such a proportion to that of the whole collective body, as rendered them extremely respectable in the cortes. (KK) The degree of consideration which they possessed in the state, may be estimated by one event.

A.D. 1390. Upon the death of John I., a council of regency was appointed to govern the kingdom during the minority of his son. It was composed of an equal number of noblemen, and of deputies chosen by the cities; the latter were admitted to the same rank. and invested with the same powers, as prelates and grandees of the first order.c But though the members of communities in Castile were elevated above the condition wherein they were placed in other kingdoms of Europe; though they had attained to such political importance, that even the proud and jealous spirit of the feudal aristocracy could not exclude them from a considerable share in the government; yet the nobles, notwithstanding these acquisitions of the commons, continued to assert the privileges of their order in opposition to the crown, in a tone extremely high. There

was not any body of nobility in Europe more distin-

<sup>[</sup>KK] Note XXXIII.

Marian. Hist. lib. aviii. c. 15.

guished for independence of spirit, haughtiness of deportment, and bold pretensions, than that of Castile. The history of that monarchy affords the most striking examples of the vigilance with which they observed. and of the vigour with which they opposed, every measure of their kings, that tended to encroach on their jurisdiction, to diminish their dignity, or to abridge their power. Even in their ordinary intercourse with their monarchs, they preserved such a consciousness of their rank, that the nobles of the first order claimed it as a privilege to be covered in the royal presence. and approached their sovereigns rather as equals than as subjects.

The constitutions of the subordinate monarchies. which depended on the crowns of Castile and Aragon, nearly resembled those of the kingdoms to which they were annexed. In all of them, the dignity and independence of the nobles were great; the immunities and

power of the cities were considerable.

Various | causes of the limited autho-Spanish monarchs.

An attentive observation of the singular situation of Spain, as well as the various events which occurred there, from the invasion of the Moors to the union of its kingdoms rity of the under Ferdinand and Isabella, will discover the causes to which all the peculiarities in its political constitution I have pointed out

ought to be ascribed.

As the provinces of Spain were wrested from the Mahometans gradually, and with difficulty, the nobles, who followed the standard of any eminent leader in these wars, conquered not for him alone, but for them-They claimed a share in the lands which their valour had won from the enemy, and their prosperity and power increased in proportion as the territory of the prince extended.

During their perpetual wars with the Moors, the monarchs of the several kingdoms in Spain depended so much on their nobles, that it became necessary to conciliate their good-will by successive grants of new

honours and privileges. By the time that any prince could establish his dominion in a conquered province, the greater part of the territory was parcelled out by him among his barons, with such jurisdiction and immunities as raised them almost to sovereign power.

At the same time, the kingdoms erected in so many different corners of Spain were of inconsiderable extent. The petty monarch was but little elevated above his nobles. They, feeling themselves to be almost his equals, acted as such; and could not look up to the kings of such limited domains with the same reverence that the sovereigns of the great monarchies in Europe were viewed by their subjects. (LL)

While these circumstances concurred in exalting the nobility, and in depressing the royal authority, there were other causes which raised the cities in Spain to

consideration and power.

As the open country, during the wars with the Moors, was perpetually exposed to the excursions of the enemy, with whom no peace or truce was so permanent as to prove any lasting security, self-preservation obliged persons of all ranks to fix their residence in places of strength. The castles of the barons, which, in other countries, afforded a commodious retreat from the depredations of banditti, or from the transient violence of any interior commotion, were unable to resist an enemy whose operations were conducted with regular and persevering vigour. Cities, in which great numbers united for their mutual defence, were the only places in which people could reside with any prospect of safety. To this was owing the rapid growth of those cities in Spain of which the Christians recovered possession. All who fled from the Moorish voke resorted to them, as to an asylum; and in them the greater part of those who took the field against the Mahometans established their families.

Several of these cities, during a longer or shorter course of years, were the capitals of little states, and

enjoyed all the advantages which accelerate the increase of inhabitants in every place that is the seat of

government.

From those concurring causes, the number of cities in Spain, at the beginning of the fifteenth century, had become considerable, and they were peopled far beyond the proportion which was common in other parts of Europe, except in Italy and the Low Countries. The Moors had introduced manufactures into those cities while under their dominion. The Christians, who, by intermixture with them, had learned their arts, continued to cultivate these. Trade, in several of the Spanish towns, appears to have been carried on with vigour; and the spirit of commerce continued to preserve the number of their inhabitants, as the sense of danger had first induced them to crowd together.

As the Spanish cities were populous, many of the inhabitants were of a rank superior to those who resided in towns in other countries of Europe. That cause, which contributed chiefly to their population, affected equally persons of every condition, who flocked thither promiscuously, in order to find shelter there, or in hopes of making a stand against the enemy with greater advantage than in any other station. The persons elected as their representatives in the cortes by the cities, or promoted to offices of trust and dignity in the government of the community, were often, as will appear from transactions which I shall hereafter relate, of such considerable rank in the kingdom, as reflected lustre on their constituents, and on the stations wherein they were placed.

As it was impossible to carry on a continual war against the Moors, without some other military force than that which the barons were obliged to bring into the field in consequence of the feudal tenures, it became necessary to have some troops, particularly a body of light cavalry, is constant pay. It was one of the privileges of the nobles, that their lands were exempt from the burden of taxes. The charge of sup-

porting the troops requisite for the public safety fell wholly upon the cities; and their kings, being obliged frequently to apply to them for aid, found it necessary to gain their favour by concessions, which not only extended their immunities, but added to their wealth and power.

When the influence of all these circumstances, peculiar to Spain, is added to the general and common causes which contributed to aggrandize cities in other countries of Europe, this will fully account for the extensive privileges which they acquired, as well as for the extraordinary consideration to which they attained in

all the Spanish kingdoms. (MM)

By these exorbitant privileges of the nobility, and this unusual power of the cities in
princes, in
order to
extend
their
power;

of such restraint, several monarchs endeavoured, at various junctures, and by different means, to enlarge their own jurisdiction. Their
power, however, or their abilities, were so unequal to
the undertaking, that their efforts were attended with

little success. But when Ferdinand and Isa-Particular- bella found themselves at the head of the ly of Ferdinand and dinand and the dinand and the danger and interruption of domestic wars,

they were not only in a condition to resume, but were able to prosecute with advantage, the schemes of extending the prerogative, which their ancestors had attempted in vain. Ferdinand's profound sagacity in concerting his measures, his persevering industry in conducting them, and his uncommon address in carrying them into execution, fitted him admirably for an undertaking which required all these talents.

Ferdinand's different of Spain felt most sensibly, and bore with the [MM] Note XXXV.

schemes for abridging the privileges bility.

greatest impatience, the great object of Ferdinand's policy was to reduce these within more moderate bounds. Under various preand power texts, sometimes by violence, more frequently of the no- in consequence of decrees obtained in the courts of law, he wrested from the barons a great part of the lands which had been granted

to them by the inconsiderate bounty of former monarchs, particularly during the feeble and profuse reign of his predecessor, Henry IV. He did not give the entire conduct of affairs to persons of noble birth, who were accustomed to occupy every department of importance in peace or in war, as if it had been a privi-lege peculiar to their order, to be employed as the sole counsellors and ministers of the crown. He often transacted business of great consequence without their intervention, and bestowed many offices of power and trust on new men devoted to his interest.d He introduced a degree of state and dignity into his court, which being little known in Spain while it remained split into many small kingdoms, taught the nobles to approach their sovereign with more ceremony, and gradually rendered him the object of greater deference and respect.

Particularly by annexing the grandmasterships of the three orders to

The annexing the masterships of the three military orders of St. Jago, Calatrava, and Alcantara, to the crown, was another expedient by which Ferdinand greatly augmented the revenue and power of the kings of Spain. These orders were instituted in imitation of those of the Knights Templars and of St. the crown; John of Jerusalem, on purpose to wage perpetual war with the Mahometans, and to pro-

tect the pilgrims who visited Compostella, or other places of eminent sanctity in Spain. The zeal and superstition of the ages in which they were founded, prompted persons of every rankoto bestow such liberal donations on those holy warriors, that, in a short time,

d Zurita Annales de Arag. tom. vi. p. 22.

they engrossed a considerable share in the property and wealth of the kingdom. The masterships of these orders came to be stations of the greatest power and opulence to which a Spanish nobleman could be advanced. These high dignities were in the disposal of the knights of the order, and placed the persons on whom they conferred them almost on a level with their sovereign. [NN] Ferdinand, unwilling that the nobility, whom he considered as already too formidable, should derive such additional credit and influence from possessing the government of these wealthy fraternities, was solicitous to wrest it out of their hands, and to vest it in the crown. His measures for accomplish-A. D. 1476, ing this were wisely planned, and executed and 1495, with vigour. By address, by promises, and and 1493. by threats, he prevailed on the knights of

each order to place Isabella and him at the head of it. Innocent VIII. and Alexander VI. gave this election the sanction of papal authority; and subsequent pontiffs rendered the annexation of these masterships to

the crown perpetual.

While Ferdinand, by this measure, diminished the power and influence of the nobicunscribing lity, and added new lustre or authority to the tion of the nobility. with a view to the same object. The sove-

reign jurisdiction, which the feudal barons exercised within their own territories, was the pride and distinction of their order. To have invaded openly a privilege which they prized so highly, and in defence of which they would have run so eagerly to arms, was a measure too daring for a prince of Ferdinand's cautious temper. He took advantage, however, of an opportunity which the state of his kingdoms and the spirit of his people presented him, in order to undermine what

<sup>[</sup>NN] Note XXXVI.

Zurita Annales, tom. v. p. 22.

Ferdinand et Elizabe gestarum
Hispan. i. 360.

Marian. Hist. lib. xxv. c. 5.

Æjii Anton. Nebrissensis rerum
decades ii. apud Schot. script,

he durst not assault. The incessant depredations of the Moors, the want of discipline among the troops which were employed to oppose them, the frequent civil wars between the crown and the nobility, as well as the undiscerning rage with which the barons carried on their private wars with each other, filled all the provinces of Spain with disorder. Rapine, outrage, and murder, became so common, as not only to interrupt commerce, but in a great measure to suspend all intercourse between one place and another. That security and protection, which men expect from entering into civil society, ceased in a great degree. Internal order and police, while the feudal institutions remained in vigour, were so little objects of attention, and the administration of justice was so extremely feeble, that it would have been vain to have expected relief from the established laws or the ordinary judges. But the evil became so intolerable, and the inhabitants of cities. who were the chief sufferers, grew so impatient of this anarchy, that self-preservation forced them to have recourse to an extraordinary remedy. About the

middle of the thirteenth century, the cities in the kingdom of Aragon, and, after their example, those in Castile, formed themselves into an association, distinguished by the name of the Holy Brotherhood. They exacted a certain contribution from each of the associated towns; they levied a considerable body of troops, in order to protect travellers, and to pursue criminals; they appointed judges, who opened their courts in various parts of the kingdom. Whoever was guilty of murder, robbery, or of any act that violated the public peace, and was seized by the troops of the Brotherhood, was carried before judges of their nomination, who, without paying any regard to the exclusive and sovereign jurisdiction which the lord of the place might claim, tried and condemned the criminals. By the establishment of this fraternity, the prompt and impartial administration of justice was restored; and, together with it, internal tranquillity and order began to return.

The nobles alone murmured at this salutary institution. They complained of it as an encroachment on one of their most valuable privileges. They remonstrated against it in a high tone; and, on some occasions, refused to grant any aid to the crown, unless it were abolished. Ferdinand, however, was sensible not only of the good effects of the Holy Brotherhood with respect to the police of his kingdoms, but perceived its tendency to abridge, and at length to annihilate, the territorial jurisdiction of the nobility. He countenanced it on every occasion. He supported it with the whole force of royal authority; and, besides the expedients employed by him in common with the other monarchs of Europe. he availed himself of this institution, which was peculiar to his kingdom, in order to limit and abolish that independent jurisdiction of the nobility, which was no less inconsistent with the authority of the prince, than with the order of society. [OO]

But though Ferdinand by these measures Notwithconsiderably enlarged the boundaries of prestanding all rogative, and acquired a degree of influence these, the government and power far beyond what any of his predecessors had enjoyed, yet the limitations of of Spain still extreme the royal authority, as well as the barriers ly free. against its encroachments, continued to be many and strong. The spirit of liberty was vigorous among the people of Spain; the spirit of independence was high among the nobility; and though the love of glory, peculiar to the Spaniards in every period of their history, prompted them to support Ferdinand with zeal in his foreign operations, and to afford him such aid as enabled him not only to undertake but to execute great enterprises, he reigned over his subjects with a jurisdiction less extensive than that of any of the great monarchs in Europe. It will appear from many passages in the following history, that, during a considerable part of the reign of his successor Charles V., the prerogative of the Spanish crown was equally circumscribed.

Constitution and government of France.

The ancient government and laws in France so nearly resemble those of the other feudal kingdoms, that such a detail with respect to them as was necessary, in order to convey some idea of the nature and effects of the pe-

culiar institutions which took place in Spain, would be superfluous. In the view which I have exhibited of the means by which the French monarchs acquired such a full command of the national force of their kingdom as enabled them to engage in extensive schemes of foreign operation, I have already pointed out the great steps by which they advanced towards a more ample possession of political power, and a more uncontrolled exercise of their royal prerogative. All that now remains is to take notice of such particulars in the constitution of France. as serve either to distinguish it from that of other countries, or tend to throw any light on the transactions of that period to which the following history extends.

Power of the general assemblies under the first race of kings.

Under the French monarchs of the first race, the royal prerogative was very inconsiderable. The general assemblies of the nation, which met annually at stated seasons, extended their authority to every department of government. The power of electing kings,

of enacting laws, of redressing grievances, of conferring donations on the prince, of passing judgment in the last resort, with respect to every person and to every cause, resided in this great convention of the na-

Under the second.

tion. Under the second race of kings, notwithstanding the power and splendour which the conquests of Charlemagne added to the crown, the

general assemblies of the nation continued to possess extensive authority. The right of determining which of the royal family should be placed on the throne, was vested in them. The princes, elevated to that dignity by their suffrage, were accustomed regularly to call and to consult them with respect to every affair of importance to the state, and without their consent no law was passed, and no new tax was levied.

But, by the time that Hugh Capet, the Under the father of the third race of kings, took posthird. session of the throne of France, such changes had happened in the political state of the kingdom, as considerably affected the power and jurisdiction of the general assembly of the nation. The royal authority, in the hands of the degenerate posterity of Charlemagne. had dwindled into insignificance and contempt. Every considerable proprietor of land had formed his territory into a barony, almost independent of the sovereign. The dukes or governors of provinces, the counts or governors of towns and small districts, and the great officers of the crown, had rendered these dignities, which originally were granted only during pleasure or for life, hereditary in their families. Each of these had usurped all the rights which hitherto had been deemed the distinctions of royalty, particularly the privileges of dispensing justice within their own domains, of coining money, and of waging war. Every district was governed by local customs, acknowledged a distinct lord, and pursued a separate interest. The formality of doing homage to their sovereign, was almost the only act of subjection which those haughty barons would perform, and that bound them no farther than they were willing to acknowledge its obligation. [PP]

The power of the general assembly, less considerable and extensive.

In a kingdom broken into so many independent baronies, hardly any common principle of union remained; and the general assembly, in its deliberations, could scarcely consider the nation as forming one body, or establish common regulations to be of equal force in every part. Within the immediate

domains of the crown, the king might publish laws, and they were obeyed, because there he was acknowledged as the only lord. But if he had aimed at rendering these laws general, that would have alarmed the barons as an encroachment upon the independence of their jurisdiction. The barons, when met in the great na-

tional convention, avoided, with no less care, the enacting of general laws, to be observed in every part of the kingdom, because the execution of them must have been vested in the king, and would have enlarged that paramount power which was the object of their jealousy. Thus, under the descendants of Hugh Capet, the Statesgeneral (for that was the name by which the supreme assembly of the French nation came then to be distinguished) lost their legislative authority, or at least entirely relinquished the exercise of it. From that period. the jurisdiction of the states-general extended no farther than to the imposition of new taxes, the determination of questions with respect to the right of succession to the crown, the settling of the regency when the preceding monarch had not fixed it by his will, and the presenting remonstrances, enumerating the grievances of

which the nation wished to obtain redress.

As, during several centuries, the monarchs of Europe seldom demanded extraordinary subsidies of their subjects, and the other events which required the interposition of the states rarely occurred, their meetings in France were not frequent. They were summoned occasionally by their kings, when compelled by their wants, or by their fears, to have recourse to the great convention of their people; but they did not, like the Diet in Germany, the Cortes in Spain, or the Parliament in England, form an essential member of the constitution, the regular exertion of whose powers was requisite to give vigour and order to government.

The crown begins to acquire legislative authority, When the states of France ceased to exercise legislative authority, the kings began to assume it. They ventured, at first, on acts of legislation with great reserve, and after taking every precaution that could prevent their subjects from being alarmed at the exercise

of a new power. They did not at once issue their ordinances in a tone of authority and command. They treated with their subjects; they pointed out what was best; and allured them to comply with it. By degrees,

however, as the prerogative of the crown extended, and as the supreme jurisdiction of the royal courts came to be established, the kings of France assumed more openly the style and authority of lawgivers; and, before the beginning of the fifteenth century, the complete legislative power was vested in the crown. [QQ]

And the power of levying taxes.

Having secured this important acquisition. the steps which led to the right of imposing taxes were rendered few and easy. The people, accustomed to see their sovereigns issue ordinances, by their sole authority, which re-

gulated points of the greatest consequence with respect to the property of their subjects, were not alarmed when they were required, by the royal edicts, to contribute certain sums towards supplying the exigencies of government, and carrying forward the measures of the nation. When Charles VII. and Louis XI. first ventured to exercise this new power, in the manner which I have already described, the gradual increase of the royal authority had so imperceptibly prepared the minds of the people of France for this innovation, that it excited no commotion in the kingdom, and seems scarcely to have given rise to any murmur or complaint.

of France becomes purely monarchical.

When the kings of France had thus en-Government grossed every power which can be exerted in government; when the right of making laws, of levying money, of keeping an army of mercenaries in constant pay, of declaring war, and of concluding peace, centred in

the crown, the constitution of the kingdom, which, under the first race of kings, was nearly democratical; which, under the second race, became an aristocracy; terminated, under the third race, in a pure monarchy. Every thing that tended to preserve the appearance, or revive the memory, of the ancient mixed government, seems from that period to have been industriously avoided. During the long and active reign of Francis I. the variety as well as extent of whose operations obliged

him to lay many heavy impositions on his subjects, the states-general of France were not once assembled, nor were the people once allowed to exert the power of taxing themselves, which, according to the original ideas of feudal government, was a right essential to every freeman.

The exereise of prerogative restrained by the privileges of the nobility; Two things, however, remained, which moderated the exercise of the regal prerogative, and restrained it within such bounds as preserved the constitution of France from degenerating into mere despotism. The rights and privileges claimed by the nobility, must be considered as one barrier against the absolute dominion of the crown. Though the

nobles of France had lost that political power which was vested in their order as a body, they still retained the personal rights and pre-eminence which they derived from their rank. They preserved a consciousness of elevation above other classes of citizens; an exemption from burdens to which persons of inferior condition were subject; a contempt of the occupations in which they were engaged; the privilege of assuming ensigns that indicated their own dignity; a right to be treated with a certain degree of deference during peace; and a claim to various distinctions when in the field. Many of these pretensions were not founded on the words of statutes, or derived from positive laws; they were defined and ascertained by the maxims of honour, a title more delicate, but no less sacred. These rights, established and protected by a principle equally vigilant in guarding, and intrepid in defending them, are to the sovereign himself objects of respect and veneration. Wherever they stand in its way, the royal prerogative is bounded. The violence of a despot may exterminate such an order of men; but as long as it subsists, and its ideas of personal distinction remain entire, the power of the prince has limits.

g De l'Esprit des Loix, liv. ii. c. 4. Dr. Ferguson's Essay on the Hist. of Civil Society, part i. sect. 10.

As in France the body of nobility was very numerous. and the individuals of which it was composed retained a high sense of their own pre-eminence, to this we may ascribe, in a great measure, the mode of exercising the royal prerogative which peculiarly distinguishes the government of that kingdom. An intermediate order was placed between the monarch and his other subjects, and in every act of authority it became necessary to attend to its privileges, and not only to guard against any real violation of them, but to avoid any suspicion of supposing it to be possible that they might be violated. Thus a species of government was established in France, unknown in the ancient world, that of a monarchy, in which the power of the sovereign, though unconfined by any legal or constitutional restraint, has certain bounds set to it by the ideas which one class of his subjects entertain concerning their own dignity.

And by the jurisdiction of the parliaments, particularly that of Paris.

The jurisdiction of the parliaments in France, particularly that of Paris, was the other barrier which served to confine the exercise of the royal prerogative within certain limits. The parliament of Paris was originally the court of the kings of France, to which they committed the supreme administration of justice within their own do-

mains, as well as the power of deciding with respect to all cases brought before it by appeals from the courts of the barons. When, in consequence of events and regulations which have been mentioned formerly, the time and place of its meeting were fixed, when not only the form of its procedure, but the principles on which it decided, were rendered regular and consistent, when every cause of importance was finally determined there, and when the people became accustomed to resort thither as to the supreme temple of justice, the parliament of Paris rose to high estimation in the kingdom, its members acquired dignity, and its decrees were submitted to with deference. Nor was this the only source of the power and influence which the par-

liament obtained. The kings of France, when they first began to assume the legislative power, in order to reconcile the minds of their people to this new exertion of prerogative, produced their edicts and ordinances in the parliament of Paris, that they might be approved of and registered there, before they were published and declared to be of authority in the kingdom. During the intervals between the meetings of the states-general of the kingdom, or during those reigns in which the statesgeneral were not assembled, the monarchs of France were accustomed to consult the parliament of Paris with respect to the most arduous affairs of government, and frequently regulated their conduct by its advice, in declaring war, in concluding peace, and in other transactions of public concern. Thus there was erected in the kingdom a tribunal which became the great depository of the laws, and by the uniform tenor of its decrees, established principles of justice and forms of proceeding which were considered as so sacred, that even the sovereign power of the monarch durst not venture to disregard or to violate them. The members of this illustrious body, though they neither possess legislative authority, nor can be considered as the representatives of the people, have availed themselves of the reputation and influence which they had acquired among their countrymen, in order to make a stand, to the utmost of their ability, against every unprecedented and exorbitant exertion of the prerogative. period of the French history, they have merited the praise of being the virtuous but feeble guardians of the rights and privileges of the nation. [RR]

Constitution and government of the German empire. After taking this view of the political state of France, I proceed to consider that of the German empire, from which Charles V. derived his title of highest dignity. In explaining the constitution of this great and complex body at the beginning of the sixteenth century, I shall avoid entering into

such a detail as would involve my readers in that inextricable labyrinth which is formed by the multiplicity of its tribunals, the number of its members, their interfering rights, and by the endless discussions or refinements of the public lawyers of Germany with respect to all these.

Its state under Charlemagne and his descendants. The empire of Charlemagne was a structure erected in so short a time, that it could not be permanent. Under his immediate successor it began to totter, and soon after fell to pieces. The crown of Germany was separated from that of France, and the de-

his descendants.

fell to pieces. The crown of Germany was separated from that of France, and the descendants of Charlemagne established two great monarchies so situated as to give rise to a perpetual rivalship and enmity between them. But the princes of the race of Charlemagne who were placed on the imperial throne, were not altogether so degenerate, as those of the same family who reigned in France. In the hands of the former, the royal authority retained some vigour, and the nobles of Germany, though possessed of extensive privileges as well as ample territories, did not so early attain independence. The great offices of the crown continued to be at the disposal of the sovereign, and during a long period fiefs remained in their original state, without becoming hereditary and perpetual in the families of the persons to whom they had been granted.

Other families are raised to the imperial dignity.

A. D. 911.

At length the German branch of the family of Charlemagne became extinct, and his feeble descendants who reigned in France had sunk into such contempt, that the Germans, without looking towards them, exercised the right inherent in a free people; and in a general assembly of the nation elected Conrad, count of Franconia, emperor.

After him Henry of Saxony, and his descendants the three Othos, were placed in succession on the imperial throne, by the suffrages of their countrymen. The extensive territories of the Saxon emperors, their eminent abilities and enterprising genius, not only added new vigour to the imperial dignity, but raised it to higher power and pre-eminence. Otho the A. D. 952. Great marched at the head of a numerous army into Italy, and after the example of Charlemagne, gave law to that country. Every power there recognised his authority. He created popes, and deposed them, by his sovereign mandate. He annexed the kingdom of Italy to the German empire. Elated with his success, he assumed the title of Cæsar Augustus. A prince, born in the heart of Germany, pretended to be the successor of the emperors of ancient Rome, and claimed a right to the same power and prerogative.

But while the emperors, by means of these

The German nobi-

new titles and new dominions, gradually acquired additional authority and splendour, lity acquire the nobility of Germany had gone on at the independent and sosame time extending their privileges and vereign aujurisdiction. The situation of affairs was thority. favourable to their attempts. The vigour which Charlemagne had given to government quickly The incapacity of some of his successors was such, as would have encouraged vassals, less enterprising than the nobles of that age, to have claimed new rights, and to have assumed new powers. The civil wars in which other emperors were engaged, obliged them to pay perpetual court to their subjects, on whose support they depended, and not only to connive at their usurpations, but to permit, and even to authorize them. Fiefs gradually became hereditary. They were transmitted not only in the direct, but also in the collateral line. The investiture of them was demanded not only by male, but by female heirs. Every baron began to exercise sovereign jurisdiction within his own domains; and the dukes and counts of Germany took wide steps towards rendering their territories distinct and independent states. The Sexon emperors observed their

h Annalista Saxo, &c. ap. Struv. Corp. vol. i. p. 246. i Pfeffel. Abregè, p. 120. 152. Lib. Feudor. tit. i.

The German ecclesiastics raised to the same power.

progress, and were aware of its tendency. But as they could not hope to humble vassals already grown too potent, unless they had turned their whole force as well as attention to that enterprise, and as they were extremely intent on their expeditions into

Italy, which they could not undertake without the concurrence of their nobles, they were solicitous not to alarm them by any direct attack on their privileges and jurisdictions. They aimed, however, at undermining their power. With this view they inconsiderately bestowed additional territories, and accumulated new honours on the clergy, in hopes that this order might serve as a counterpoise to that of the nobility in any future struggle.<sup>k</sup>

The fatal effects of aggrandizing the

clergy.

The unhappy effects of this fatal error in policy were quickly felt. Under the emperors of the Franconian and Swabian lines, whom the Germans, by their voluntary election, placed on the imperial throne, a new face of things appeared, and a scene was

A.D. 1024. face of things appeared, and a scene was exhibited in Germany, which astonished all Christendom at that time, and in the present age appears almost incredible. The popes hitherto depended on the emperors, and indebted for power as well as dignity to their beneficence and protection, began to claim a superior jurisdiction; and, in virtue of authority which they pretended to derive from Heaven, tried, condemned, excommunicated, and deposed, their former mas-Nor is this to be considered merely as a frantic sally of passion in a pontiff intoxicated with high ideas concerning the extent of priestly domination and the plenitude of papal authority. Gregory VII. was able as well as daring. His presumption and violence were accompanied with political discernment and sagacity. He had observed that the princes and nobles of Germany had acquired such considerable territories and such extensive jurisdiction, as rendered them not only

formidable to the emperors, but disposed them to favour any attempt to circumscribe their power. He foresaw that the ecclesiastics of Germany, raised almost to a level with its princes, were ready to support any person who would stand forth as the protector of their privileges and independence. With both of these Gregory negotiated, and had secured many devoted adherents among them, before he ventured to enter the lists against the head of the empire.

The contests between the popes and emperors, and the consequences of these.

He began his rupture with Henry IV. upon a pretext that was popular and plausible. He complained of the venality and corruption with which the emperor had granted the investiture of benefices to ecclesiastics. He contended that this right belonged to him as the head of the church; he required Henry to confine himself within

the bounds of his civil jurisdiction, and to abstain for the future from such sacrilegious encroachments on the spiritual dominion. All the censures of the church were denounced against Henry, because he refused to relinquish those powers which his predecessors had uniformly exercised. The most considerable of the German princes and ecclesiastics were excited to take arms against him. His mother, his wife, his sons, were wrought upon to disregard all the ties of blood as well as of duty, and to join the party of his enemies.1 Such were the successful arts with which the court of Rome inflamed the superstitious zeal and conducted the factious spirit of the Germans and Italians, that an emperor, distinguished not only for many virtues, but possessed of considerable talents, was at length obliged to appear as a supplicant at the gate of the castle in which the pope resided, and to stand there, three days, bare-footed, in the depth of A.D. 1077. winter, imploring a pardon, which at length he obtained with difficulty. [SS]

> Annal. German. ap. Struv. i. p. 325. [SS] Note XLI.

This act of humiliation degraded the imperial dignity. Nor was the depression momentary only. The contest between Gregory and Henry gave rise to the two great factions of the Guelfs and Ghibellines; the former of which supporting the pretensions of the popes, and the latter defending the rights of the emperor, kept Germany and Italy in perpetual agita-

The imperial authority gradually declines.

tion during three centuries. A regular system for humbling the emperors and circumscribing their power was formed, and adhered to uniformly throughout that period. The popes, the free states in Italy, the nobility, and ecclesiastics of Germany, were

all interested in its success; and notwithstanding the return of some short intervals of vigour, under the administration of a few able emperors, the imperial auA.D. 1256. thority continued to decline. During the anarchy of the long interregnum subsequent to the death of William of Holland, it dwindled down A.D. 1273. almost to nothing. Rodulph of Hapsburgh, the founder of the house of Austria,

and who first opened the way to its future grandeur, was at length elected emperor, not that he might reestablish and extend the imperial authority, but because his territories and influence were so inconsiderable as to excite no jealousy in the German princes, who were willing to preserve the forms of a constitution, the power and vigour of which they had destroyed. Several of his successors were placed on the imperial throne from the same motive; and almost every remaining prerogative was wrested out of the hands of feeble princes unable to exercise or to defend them.

A total change in the political constitution of the empire: During this period of turbulence and confusion, the constitution of the Germanic body underwent a total change. The ancient names of courts and magistrates, together with the original forms and appearance of policy, were preserved; but such

new privileges and jurisdiction were assumed, and so many various rights established, that the same species of government no longer subsisted. The princes, the great nobility, the dignified ecclesiastics, the free cities, had taken advantage of the interregnum, which I have mentioned, to establish or to extend their usur-They claimed and exercised the right of governing their respective territories with full sove-reignty. They acknowledged no superior with respect to any point relative to the interior administration and police of their domains. They enacted laws, imposed taxes, coined money, declared war, concluded peace, and exerted every prerogative peculiar to independent states. The ideas of order and political union, which had originally formed the various provinces of Germany into one body, were almost entirely lost: and the society must have dissolved, if the forms of feudal subordination had not preserved such an appearance of connexion or dependance among the various members of the community, as preserved it from falling to pieces.

This bond of union, however, was extremely feeble; and hardly any principle remained in the German constitution of sufficient force to maintain public order, or anarchy.

the accession of Rodulph of Hapsburgh to the reign of Maximilian, the immediate prodecessor of Charles V., the empire felt every calamity which a state must endure, when the authority of government is so much relaxed as to have lost its proper degree of vigour. The causes of dissension among that vast number of members which composed the Germanic body were infinite and unavoidable. These gave rise to perpetual private wars, which were carried on with all the violence that usually accompanies resentment, when unrestrained by superior authority. Rapine, outrage, exactions, became universal. Commerce was interrupted; industry suspended; and every part of

Germany resembled a country which an enemy had plundered and left desolate. The variety of expedients employed with a view to restore order and tranquillity, prove that the grievances occasioned by this state of anarchy had grown intolerable. Arbiters were appointed to terminate the differences among the several states. The cities united in a league, the object of which was to check the rapine and extortions of the nobility. The nobility formed confederacies on purpose to maintain tranquillity among their own Germany was divided into several circles, in each of which a provincial and partial jurisdiction was established, to supply the place of a public and common tribunal.m

Particularly by the institution of the Imperial Chamber.

But all these remedies were so ineffectual, that they served only to demonstrate the violence of that anarchy which prevailed, and the insufficiency of the means employed to correct it. At length Maximilian re-established public order in the em-A. D. 1495. pire, by instituting the Imperial Chamber,

a tribunal composed of judges named partly by the emperor, partly by the several states, and vested with authority to decide finally concerning all differences among the members of the

A. D. 1512. Germanic body. A few years after, by giving a new form to the Aulic Council, which takes cognizance of all feudal causes, and such as belong to the emperor's immediate jurisdiction, he restored some degree of vigour to the imperial authority.

At the beginning of the sixteenth century, the empire an

But notwithstanding the salutary effects of these regulations and improvements, the political constitution of the German empire, at the commencement of the period of which I propose to write the history, was of a species so peculiar, as not to resemble perfect-

See above, page 48, and note xi. Datt. de pace publica Imper. p. 25. no. 53; p. 28. no. 26, p. 35, no. 11.

ly any form of government known either in association of sovereign the ancient or modern world. It was a states. complex body, formed by the association of several states, each of which possessed sovereign and independent, jurisdiction within its own territories. Of all the members which composed this united body. the emperor was the head. In his name all decrees and regulations, with respect to points of common concern, were issued; and to him the power of carrying them into execution was committed. But this appearance of monarchical power in the emperor was more than counterbalanced by the influence of the princes and states of the empire in every act of administration. No law extending to the whole body could pass, no resolution that affected the general interest could be taken, without the approbation of the diet of the empire. In this assembly every sovereign prince and state of the Germanic body had a right to be present, to deliberate, and to vote. The decrees or recesses of the diet were the laws of the empire, which the emperor was bound to ratify and enforce.

Peculiarities in the nature of this association. Under this aspect, the constitution of the empire appears a regular confederacy, similar to the Achæan league in ancient Greece, or to that of the United Provinces and of the Swiss Cantons in modern times. But if viewed in another light, striking pecu-

liarities in its political state present themselves. The Germanic body was not formed by the union of members altogether distinct and independent. All the princes and states joined in this association were originally subject to the emperors, and acknowledged them as sovereigns. Besides this, they originally held their lands as imperial fiefs, and in consequence of this tenure, owed the emperor all those services which feudal vassals are bound to perform to their liege lord. But though this political subjection was entirely at an end, and the influence of the feudal relation much diminished, the ancient forms and institutions, intro-

duced while the emperors governed Germany with authority not inferior to that which the other monarchs of Europe possessed, still remained. Thus an opposition was established between the genius of the government, and the forms of administration in the German empire. The former considered the emperor only as the head of a confederacy, the members of which, by their voluntary choice, have raised him to that dignity; the latter seemed to imply, that he is really invested with sovereign power. By this circum-

The defects in the constitution of the empire;

stance, such principles of hostility and discord were interwoven into the frame of the Germanic body, as affected each of its members, rendering their interior union incomplete, and their external efforts feeble and irregular. The pernicious influence of

this defect, inherent in the constitution of the empire, is so considerable, that, without attending to it, we cannot fully comprehend many transactions in the reign of Charles V., or form just ideas concerning the

genius of the German government.

the limited power of the emperors;

The emperors of Germany, at the begin-Arising from ning of the sixteenth century, were distinguished by the most pompous titles, and by such ensigns of dignity, as intimated their authority to be superior to that of all

other monarchs. The greatest princes of the empire attended and served them, on some occasions, as the officers of their household. They exercised prerogatives which no other sovereign ever claimed. They retained pretensions to all the extensive powers which their predecessors had enjoyed in any former age. But, at the same time, instead of possessing that ample domain which had belonged to the ancient emperors of Germany, and which stretched from Basil to Cologne, along both banks of the Rhine," they were stripped of all territorial property, and had not a single city, a single castle, a single foot of land,

that belonged to them, as heads of the empire. As their domains was alienated, their stated revenues were reduced almost to nothing; and the extraordinary aids which, on a few occasions, they obtained, were granted sparingly and paid with reluctance. princes and states of the empire, though they seemed to recognise the imperial authority, were subjects only in name, each of them possessing a complete municipal jurisdiction within the precincts of his own territories.

From the nature of their titles and pretensions:

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From this ill-compacted frame of government effects that were unavoidable resulted. The emperors, dazzled with the splendour of their titles and the external signs of vast authority, were apt to imagine themselves to be the real sovereigns of Germany, and

were led to aim continually at recovering the exercise of those powers which the forms of the constitution scemed to vest in them, and which their predecessors. Charlemagne and the Othos, had actually enjoyed. The princes and states, aware of the nature as well as extent of these pretensions, were perpetually on their guard, in order to watch all the motions of the imperial court, and to circumscribe its power within limits still more narrow. The emperors, in support of their claims, appealed to ancient forms and institutions, which the states held to be obsolete. The states founded their rights on recent practice and modern privileges, which the emperors considered as usurpations.

From the manner in which they were elected;

This jealousy of the imperial authority. together with the opposition between it and the rights of the states, increased considerably from the time that the emperors were elected, not by the collective body of German nobles, but by a few princes of chief

During a long period, all the members of the dignity. Germanic body had a right to assemble, and to make choice of the person whom they appointed to be their head. But amidst the violence and anarchy which prevailed for several centuries in the empire, seven

princes who possessed the most extensive territories. and who had obtained an hereditary title to the great offices of the state, acquired the exclusive privilege of nominating the emperor. This right was confirmed to them by the Golden Bull; the mode of exercising it was ascertained, and they were dignified with the appellation of *Electors*. The nobility and free cities being thus stripped of a privilege which they had once enjoyed, were less connected with a prince towards whose elevation they had not contributed by their suffrages, and came to be more apprehensive of his authority. The electors, by their extensive power, and the distinguishing privileges which they possessed, became formidable to the emperors, with whom they were placed almost on a level in several acts of jurisdiction. Thus the introduction of the electoral college into the empire. and the authority which it acquired, instead of diminishing, contributed to strengthen, the principles of hostility and discord in the Germanic constitution.

From the different forms of government established in the states which composed the Germanic body;

These were farther augmented by the various and repugnant forms of civil policy in the several states which composed the Germanic body. It is no easy matter to render the union of independent states perfect and entire, even when the genius and forms of their respective governments happen to be altogether similar. But in the German empire, which was a confederacy of princes, of ecclesiastics, and of free cities, it was impos-

sible that they could incorporate thoroughly. The free cities were small republics, in which the maxims and spirit peculiar to that species of government prevailed. The princes and nobles, to whom supreme jurisdiction belonged, possessed a sort of monarchical power within their own territories, and the forms of their interior administration nearly resembled those of the great feudal kingdoms. The interests, the ideas, the objects of states so differently constituted, cannot be the same. Nor could their common deliberations be carried on

with the same spirit, while the love of liberty, and attention to commerce, were the reigning principles in the cities; while the desire of power, and ardour for military glory, were the governing passions of the princes and mobility.

From the opposition between the secular and ecclesiastical members:

The secular and ecclesiastical members of the empire were as little fitted for union as the free cities and the nobility. Considerable territories had been granted to several of the German bishoprics and abbeys, and some of the highest offices in the empire having been annexed to them inalienably,

were held by the ecclesiastics raised to these dignities. The younger sons of noblemen of the second order. who had devoted themselves to the church, were commonly promoted to these stations of eminence and power; and it was no small mortification to the princes and great nobility, to see persons raised from an inferior rank to the same level with themselves, or even exalted to superior dignity. The education of these churchmen, the genius of their profession, and their connexion with the court of Rome, rendered their character as well as their interest different from those of the other members of the Germanic body, with whom they were called to act in concert. Thus another source of jealousy and variance was opened, which ought not to be overlooked when we are searching into the nature of the Germanic constitution.

From the unequal distribution of wealth and power among the members.

To all these causes of dissension may be added one more, arising from the unequal distribution of power and wealth among the states of the empire. The electors, and other nobles of the highest rank, not only possessed sovereign jurisdiction, but governed such extensive, populous, and rich

countries, as rendered them great princes. Many of the other members, though they enjoyed all the rights of sovereignty, ruled over such petty domains, that their real power bore no proportion to this high prerogative. A well-compacted and vigorous confederacy could not be formed of such dissimilar states. The weaker were jealous, timid, and unable either to assert or to defend their just privileges. The more powerful were apt to assume and to become oppressive. The electors and emperors, by turns, endeavoured to extend their own authority by encroaching on those feeble members of the Germanic body, who sometimes defended their rights with much spirit, but more frequently, being overawed or corrupted, they tamely surrendered their privileges, or meanly favoured the designs formed against them. [TT]

All these render the Germanic body incapable of acting with union and vigour. After contemplating all these principles of disunion and opposition in the constitution of the German empire, it will be easy to account for the want of concord and uniformity conspicuous in its councils and proceedings. That slow, dilatory, distrustful, and irresolute spirit, which characterizes all its deliberations, will appear natural in a body,

the junction of whose members was so incomplete, the different parts of which were held together by such feeble ties, and set at variance by such powerful motives. But the empire of Germany, nevertheless, comprehended countries of such great extent, and was inhabited by such a martial and hardy race of men, that when the abilities of an emperor, or zeal for any common cause, could rouse this unwieldly body to put forth its strength, it acted with almost irresistible force. In the following history we shall find, that as the measures on which Charles V. was most intent were often thwarted or rendered abortive by the spirit of jealousy and division peculiar to the Germanic constitution, so it was by the influence which he acquired over the princes of the empire, and by engaging them to cooperate with him, that he was enabled to make some of the greatest efforts which distinguish his reign.

The Turkish history is so blended, during the

view of the Turkish government.

reign of Charles V., with that of the great nations in Europe, and the Ottoman Porte interposed so often, and with such decisive influence, in the wars and negotiations of the Christian princes, that some previous account of the state of government in that great empire, is no less necessary for the information of my readers than those views of the constitution of other kingdoms which I have already exhibited to them.

It has been the fate of the southern and Its origin. more fertile parts of Asia, at different periods, to be conquered by that warlike and hardy race of men who inhabit the vast country known to the ancients by the name of Scythia, and among the moderns by that of Tartary. One tribe of these people. called Turks or Turcomans, extended its conquests, under various leaders, and during several centuries, from the shore of the Caspian sea to the straits of the Dardanelles. Towards the middle of the fifteenth century, these formidable conquerors took Constantinople by storm, and established the seat of their government in that imperial city. Greece, Moldavia. Wallachia, and the other provinces of the ancient kingdoms of Thrace and Macedonia, together with part of Hungary, were subjected to their power.

But though the seat of the Turkish go-Its despovernment was fixed in Europe, and the sultic genius. tans obtained possession of such extensive dominions in that quarter of the globe, the genius of their policy continued to be purely Asiatic; and may be properly termed a despotism, in contradistinction to those monarchical and republican forms of government which we have been hitherto-contemplating. The supreme power was vested in sultans of the Ottoman race, that blood being deemed so sacred, that no other was thought worthy of the throne. From this elevation, these sovereigns could look down and behold all their subjects reduced to the same level before them. maxims of Turkish policy do not authorize any of those

institutions which, in other countries, limit the exercise. or moderate the rigour of monarchical power: they admit neither of any great court, with constitutional and permanent jurisdiction, to interpose, both in enacting laws, and in superintending the execution of them; nor of a body of hereditary nobles, whose sense of their own pre-eminence, whose consciousness of what is due to their rank and character, whose jealousy of their privileges, circumscribe the authority of the prince, and serve not only as a barrier against the excesses of his caprice, but stand as an intermediate order between him and the people. Under the Turkish government, the political condition of every subject is equal. To be employed in the service of the sultan is the only circumstance that confers distinction. Even this distinction is rather official than personal, and so closely annexed to the station in which any individual serves, that it is scarcely communicated to the persons of those who are placed in them. The highest dignity in the empire does not give any rank or pre-eminence to the family of him who enjoys it. As every man, before he is raised to any station of authority, must go through the preparatory discipline of a long and servile obedience,° the moment he is deprived of power, he and his posterity return to the same condition with other subjects, and sink back into obscurity. It is the distinguishing and odious characteristic of Eastern despotism, that it annihilates all other ranks of men, in order to exalt the monarch; that it leaves nothing to the former, while it gives every thing to the latter; that it endeavours to fix in the minds of those who are subject to it, the idea of no relation between men but that of a master and of a slave, the former destined to command and to punish, the latter formed to tremble and to obey. וטטו

But as there are circumstances which power of frequently obstruct or defeat the salutary effects of the best-regulated governments, State of the Turkish Empire by Rycaut, p. 25. [UU] Note XLIII.

there are others which contribute to mitigate limited by the evils of the most defective forms of poreligion; licy. There can, indeed, be no constitutional restraints upon the will of a prince in a despotic government: but there may be such as are accidental. Absolute as the Turkish sultans are, they feel themselves circumscribed both by religion, the principle on which their authority is founded, p and by the army, the instrument which they must employ in order to maintain it. Wherever religion interposes, the will of the sovereign must submit to its decrees. When the Koran hath prescribed any religious rite, hath enjoined any moral duty, or hath confirmed, by its sanction, any political maxim, the command of the sultan cannot overturn that which a higher authority hath established. The chief restriction, however, on the will of the sultans, is imposed by the military power. An armed force And by the must surround the throne of every despot, military. to maintain his authority, and to execute his commands. As the Turks extended their empire over nations which they did not exterminate, but reduce to subjection, they found it necessary to render their military establishment numerous and formidable. Amurath, their third sultan, in order Origin of the Janito form a body of troops devoted to his will, zaries. A. D. 1362. that might serve as the immediate guards of his person and dignity, commanded his officers to seize annually, as the imperial property, the fifth part of the youth taken in war. These, after being instructed in the Mahometan religion, inured to obedience by severe discipline, and trained to warlike exercises, were formed into a body distinguished by the name of Janizaries, or new soldiers. Every sentiment which enthusiasm can inspire, every mark of distinction that the favour of the prince could confer, were employed in order to animate this body with martial ardour, and with a consciousness of its own

pre-eminence. The janizaries soon became the chief strength and pride of the Ottoman armies; and, by number as well as reputation, were distinguished above all the troops, whose duty it was to attend on the person of the sultans. [XX]

Thus, as the supreme power in every society is possessed by those who have arms in their hands, this formidable body of soldiers, destined to be the instruments of enlarging the sultan's authority, acquired, at the same time, the means of controlling

The janizaries in Constantinople, like the Prætorian bands in ancient Rome, quickly perceived all the advantages which they derived from being stationed in the capital; from their union under one standard; and from being masters of the person of the prince. The sultans became no less sensible of their influence and importance. The Capiculy, or soldiery of the Porte, was the only power in the empire that a sultan or his vizier had reason to dread. To preserve the fidelity and attachment of the janizaries, was the great art of government, and the principal object of attention in the policy of the Ottoman court. Under a monarch, whose abilities and vigour of mind fit him for command, they are obsequious instruments; execute whatever he enjoins, and render his power irresistible. Under feeble princes, or such as are unfortunate, they become turbulent and mutinous; assume the tone of masters; degrade and exalt sultans at pleasure; and teach those to tremble, on whose nod, at other times, life and death depend.

From Mahomet II., who took Constantinople, to Solyman the Magnificent, who began his reign a few months after Charles V. was placed on the imperial throne of Germany, a succession of illustrious princes ruled over the Turkish empire. By their great abilities,

g Prince Cantemir's History of the Othman Empire, p. 87.
[XX] Note XLIV.

they kept their subjects of every order, military as well as civil, submissive to government, and had the absolute command of whatever force their vast empire was able to exert. Solyman, in particular, who is known to the Christians chiefly as a conqueror, but is celebrated in the Turkish annals as the great lawgiver who established order and police in their empire, governed, during his long reign, with no less authority than wisdom. He divided his dominions into several districts; he appointed the number of soldiers which each should furnish; he appropriated a certain proportion of the land in every province for their maintenance; he regulated, with a minute accuracy, every thing relative to their discipline, their arms, and the nature of their service. He put the finances of the empire into an orderly train of administration; and though the taxes in the Turkish dominions, as well as in the other despotic monarchies of the East, are far from being considerable, he supplied that defect by an attentive and severe economy.

Advantages which they possessed over the Christian powers in the sixteenth century.

Nor was it only under such sultans as Solyman, whose talents were no less adapted to preserve internal order than to conduct the operations of war, that the Turkish empire engaged with advantage in its contests with the Christian states. The long succession of able princes, which I have mentioned, had given such vigour and firmness to the Ottoman government, that it

seems to have attained, during the sixteenth century, the highest degree of perfection of which its constitution was capable. Whereas the great monarchies in Christendom were still far from that state which could enable them to act with a full exertion of their force. Besides this, the Turkish troops in that age possessed every advantage which arises from superiority in military discipline. At the time when Solyman began his reign, the janizaries had been embodied near a century and a half; and, during that long period, the severity

of their military discipline had in no degree relaxed. The other soldiers, drawn from the provinces of the empire, had been kept almost continually under arms in the various wars which the sultans had carried on. with hardly any interval of peace. Against troops thus trained and accustomed to service, the forces of the Christian powers took the field with great disadvantage. The most intelligent, as well as impartial authors of the sixteenth century, acknowledge and lament the superior attainments of the Turks in the military art. [YY] The success which almost uniformly attended their arms in all their wars, demonstrates the justness of this observation. The Christian armies did not acquire that superiority over the Turks which they now possess, until the long establishment of standing forces had improved military discipline among the former; and until various causes and events, which it is not my province to explain, had corrupted or abolished their ancient warlike institutions among the latter.

[YY] Note XLV.

## PROOFS

AND

# ILLUSTRATIONS.

## Note I. Sect. I. p. 11. [A]

THE consternation of the Britons, when invaded by the Picts and Caledonians, after the Roman legions were called out of the island, may give some idea of the degree of debasement to which the human mind was reduced by long scrvitude under the Romans. In their supplicatory letter to Ætius, which they call the Groans of Britain, "We know not (say they) which way to turn us. The barbarians drive us to the sca, and the sea forces us back on the barbarians; between which we have only the choice of two deaths, either to be swallowed up by the waves, or to be slain by the sword." Histor. Gildæ ap. Gale, Hist. Britan. Script p. 6. One can hardly believe this dastardly race to be the descendants of that gallant people, who repulsed Cæsar, and defended their liberty so long against the Roman arm y

# Note II. Sect. I. p. 12. [B]

THE barbarous nations were not only illiterate, but regarded literature with contempt. They found the inhabitants of all the provinces of the empire sunk in effeminacy, and averse to war. Such a character was the object of some of the substitution of the would brand an enemy," says Liutprandus, "with the most disgraceful and contumelious appellation, we call him a Roman; hoc solo, id est Roman; nomine, quicquid ignobilitatis, quicquid timiditatis, quicquid avaritiæ, quicquid luxuriæ, quicquid mendacii, immo quicquid vitiorum est

comprehendentes." Liutprandi Legatio apud Murat. Scriptor. Italic. vol. ii. pars 1. p. 481. This degeneracy of manners, illiterate barbarians imputed to their love of learning. Even after they settled in the countries which they had conquered. they would not permit their children to be instructed in any science; "for (say they) instruction in the sciences tends to corrupt, enervate, and depress the mind; and he who has been accustomed to tremble under the rod of a pedagogue, will never look on a sword or spear with an undauntéd eve." Procop. de bello Gothor. lib. i. p. 4. ap. Scrip. Byz. edit. Venet. vol. i. A considerable number of years elapsed before nations so rude, and so unwilling to learn, could produce historians capable of recording their transactions, or of describing their manners and institutions. By that time the memory of their ancient condition was in a great measure lost, and few monuments remained to guide their first writers to any certain knowledge of it. one expects to receive any satisfactory account of the manners and laws of the Goths, Lombards, or Franks, during their residence in those countries where they were originally seated, from Jornandes, Paulus Warnefridus, or Gregory of Tours, the earliest and most authentic historians of these people, he will be miserably disappointed. Whatever imperfect knowledge has been conveyed to us of their ancient state, we owe not to their own writers, but to the Greek and Roman historians.

## Note III. Sect. I. p. 12. [C]

A CIRCUMSTANCE related by Priscus, in his history of the embassy to Attila, king of the Huns, gives a striking view of the enthusiastic passion for war which prevailed among the barbarous nations. When the entertainment to which that fierce conqueror admitted the Roman ambassadors was ended, two Scythians advanced towards Attila, and recited a poem, in which they celebrated his victories and military virtues. All the Huns fixed their eyes with attention on the bards. Some eemed to be delighted with the verses; others, remembering their own battles and exploits, exulted with joy; while such as were become feeble through age, burst out into tears, bewailing the decay of their vigour, and the state of inactivity in which they were now obliged to remain. Excerpta ex Historia Prisci Rhetoris ap. Rvz. Hist. Script. vol. i. p. 45.

### Note IV. Sect. I. p. 18. [D]

A REMARKABLE confirmation of both parts of this reasoning occurs in the history of England. The Saxons carried on the conquest of that country with the same destructive spirit which distinguished the other barbarous nations. The ancient inhabitants of Britain were either exterminated, or forced to take shelter among the mountains of Wales, or reduced to servitude. The Saxon government, laws, manners, and language, were of consequence introduced into Britain, and were so perfectly established, that all memory of the institutions previous to their conquest of the country was in a great measure lost. The very reverse of this happened in a subsequent revolution. A single victory placed William the Norman on the throne of England. The Saxon inhabitants, though oppressed, were not exterminated. William employed the utmost efforts of his power and policy to make his new subjects conform in every thing to the Norman standard, but without success. The Saxons, though vanquished, were far more numerous than their conquerors; when the two races began to incorporate, the Saxon laws and manners gradually gained ground. The Norman institutions became unpopular and odious; many of them fell into disuse; and in the English constitution and language, at this day, many essential parts are manifestly of Saxon, not of Norman extraction.

### Note V. Sect. I. p. 18. [E]

PROCOPIUS, the historian, declines, from a principle of benevolence, to give any particular detail of the cruelties of the Goths: "Lest," says he, "I should transmit a monument and example of inhumanity to succeeding ages." Proc. de bello Goth. lib. iii. cap. 10. ap. Byz. Script. vol. i. But as the change which I have pointed out, as a consequence of the settlement of the barbarous nations in the countries formerly subject to the Roman empire, could not have taken place if the greater port of the ancient inhabitants had not been extirpated, an event of such importance and influence merits a more particular illustration. This will justify me for exhibiting some part of that melancholy spectacle, over which humanity prompted Procopius to draw a veil. I shall not, however, disgust my readers by a minute narration; but rest satisfied with collecting some instances of the devastations made by two of the

many nations which settled in the empire. The Vandals were the first of the barbarians who invaded Spain. It was one of the richest and most populous of the Roman provinces: the inhabitants had been distinguished for courage, and had defended their liberty against the arms of Rome, with greater obstinacy, and during a longer course of years, than any nation in Europe. But so entirely were they enervated, by their subjection to the Romans, that the Vandals, who entered the kingdom A. D. 409, completed the conquest of it with such rapidity, that, in the year 411, these barbarians divided it among them, by casting lots. The desolation occasioned by their invasion is thus described by Idatius, an eye-witness: "The barbarians wasted every thing with hostile cruelty. The pestilence was no less destructive. A dreadful famine raged to such a degree, that the living were constrained to feed on the dead bodies of their fellow-citizens; and all those terrible plagues desolated at once the unhappy kingdoms." Idatii Chron. ap. Biblioth, Patrum, vol. vii, p. 1233. edit. Lugd. 1677. The Goths, having attacked the Vandals in their new settlements, a fierce war ensued; the country was plundered by both parties; the cities which had escaped from destruction in the first invasion of the Vandals, were now laid in ashes, and the inhabitants exposed to suffer every thing that the wanton cruelty of barbarians could inflict. Idatius describes these scenes of inhumanity, ibid. p. 1235. b. 1236. c. f. A similar account of their devastations is given by Isidorus Hispalensis, and other contemporary writers. Isid. Chron. ap. Grot. Hist. Goth. 732. From Spain the Vandals passed over into Africa, A.D. 428. Africa was, next to Egypt, the most fertile of the Roman provinces. It was one of the granaries of the empire, and is called by an ancient writer the soul of the commonwealth. Though the army with which the Vandals invaded it did not exceed thirty thousand fighting men, they became absolute masters of the province in less than two years. A contemporary author gives a dreadful account of the havor which they made: "They found a province well cultivated, and enjoying plenty, the beauty of the whole earth. They carried their destructive arms into every corner of it; they dispeopled it by their devastations, exterminating every thing with fire and sword. They did not even spare the vines and fruit-trees, that those to whom caves and inaccessible mountains had afforded a retreat might find no nourishment of any kind. Their hostile rage could not be satiated, and here was no place exempted from the effects of it. They

tortured their prisoners with the most exquisite cruelty. that they might force from them a discovery of their hidden treasures. The more they discovered, the more they expected, and the more implacable they became. Neither the infirmities of age nor of sex, neither the dignity of nobility, nor the sanctity of the sacerdotal office, could mitigate their fury; but the more illustrious their prisoners were, the more barbarously they insulted them. The public buildings, which resisted the violence of the flames, they levelled with the ground. They left many cities without an inhabitant. When they approached any fortified place which their undisciplined army could not reduce, they gathered together a multitude of prisoners. and, putting them to the sword, left their bodies unburied, that the stench of the carcasses might oblige the garrison to abandon it." Victor Vitensis de persecutione Africana ap. Bibl. Patrum, vol. viii. p. 666. St. Augustin, an African, who survived the conquest of his country by the Vandals some years, gives a similar description of their cruelties. Opera, vol. x. p. 372. edit. 1616.—About a hundred years after the settlement of the Vandals in Africa. Belisarius attacked and dispossessed them. Procopius, a contemporary historian, describes the devastation which that war occasioned. "Africa," says he, "was so entirely dispeopled, that one might travel several days in it without meeting one man; and it is no exaggeration to say, that in the course of the war five millions of persons perished." Proc. Hist. Arcana, cap. 18. ap. Byz. Script. vol. i. 315.-I have dwelt longer upon the calamities of this province, because they are described, not only by contemporary authors, but by eye-witnesses. The present state of Africa confirms their testimony. Many of the most flourishing and populous cities with which it was filled, were so entirely ruined, that no vestiges remain to point out where they were situated. That fertile territory, which sustained the Roman empire, still lies in a great measure uncultivated; and that province which Victor, in his barbarous Latin, called Speciositas totius terræ florentis, is now the retreat of pirates and banditti.

While the Vandals laid waste a great part of the empire, the Huns desolated the remainder. Of all the barbarous tribes, they were the fiercest and most formidable. Ammianus Marcellinus, a contemporary author, and one of the best of the later historians, gives an account of their policy and manners, which nearly resembles those of the Scythians described by the ancients, and of the Tartars known to the

Some parts of their character, and several of their customs, are not unlike those of the savages in North America. Their passion for war was extreme. "As in polished societies (says Ammianus) ease and tranquillity are courted, they delight in war and dangers. He who falls in battle is reckened happy. They who die of old age or of disease are deemed infamous. They boast, with the utmost exultation, of the number of enemies whom they have slain. and, as the most glorious of all ornaments, they fasten the scalps of those who have fallen by their hands to the trappings of their horses." Ammian. Marc. lib. xxxi. p. 477. edit. Gronov. Ludg. 1693.—Their incursions into the empire began in the fourth century; and the Romans, though no strangers, by that time, to the effects of barbarous rage. were astonished at the cruelty of their devastations. Thrace, Pannonia, and Illyricum, were the countries which they first laid desolate. As they had at first no intention of settling in Europe, they made only inroads of short continuance into the empire, but these were frequent, and Procopius computes that in each of these, at a medium, two hundred thousand persons perished, or were carried off as slaves. Procop. Hist. Arcan. ap. Byz. Script. vol. i. 316. Thrace. the best cultivated province in that quarter of the empire. was converted into a desert; and, when Priscus accompanied the ambassadors sent to Attila, there were no inhabitants in some of the cities but a few miserable people who had taken shelter among the ruins of the churches; and the fields were covered with the bones of those who had fallen by the sword. Priscus ap. Byz. Script. vol. i, 34. Attila became king of the Huns A. D. 434. He was one of the greatest and most enterprising conquerors mentioned in history. He extended his empire over all the vast countries comprehended under the general names of Scythia and Germany in the ancient division of the world. While he was carrying on his wars against the barbarous nations, he kept the Roman empire under perpetual apprehensions, and extorted enormous subsidies from the timid and effeminate monarchs who governed it. In the year 451, he entered Gaul at the head of an army composed of all the various nations which he had subdued. It was more numerous than any with which the barbarians had hitherto invaded the empire. The devastations which he committed were horrible; not only the open country, but the most flourishing cities, were desolated. The extent and crucity of his devastations are described by Salvianus de Gubernat. Die, edit. Baluz. Par.

1669. p. 139, &c. and by Idatius, ubi supra, p. 1235. Ætius put a stop to his progress in that country by the famous battle of Chalons, in which (if we may believe the historians of that age) three hundred thousand persons perished. Idat. ibid. Jornandes de Rebus Geticis ap. Grot. Hist. Gothor. p. 671. Amst. 1665. But the next vear he resolved to attack the centre of the empire, and, marching into Italy, he wasted it with rage, inflamed by the sense of his late disgrace. What Italy suffered by the Huns exceeded all the calamities which the preceding incursions of the barbarians had brought upon it. Conringius has collected several passages from the ancient historians, which prove that the devastations committed by the Vandals and Huns in the countries situated on the banks of the Rhine, were no less cruel and fatal to the human race. Exercitatio de urbibus Germaniæ, Opera, vol. i. 488. It is endless, it is shocking, to follow those destroyers of mankind through so many scenes of horror, and to contemplate the havoc

which they made of the human species.

But the state in which Italy appears to have been during several ages after the barbarous nations settled in it, is the most decisive proof of the cruelty as well as extent of their devastations. Whenever any country is thinly inhabited, trees and shrubs spring up in the uncultivated fields, and, spreading by degrees, form large forests; by the overflowing of rivers, and the stagnating of waters, other parts of it are converted into lakes and marshes. Ancient Italy, which the Romans rendered the seat of clegance and luxury, was cultivated to the highest pitch. But so effectually did the devastations of the barbarians destroy all the effects of Roman industry and cultivation, that in the eighth century a considerable part of Italy appears to have been covered with forests and marshes of great extent. Muratori enters into a minute detail concerning the situation and limits of several of these; and proves, by the most authentic evidence, that great tracts of territory in all the different provinces of Italy, were either overrun with wood, or laid under water. Nor did these occupy parts of the country naturally barren or of little value, but were spread over districts which ancient writers represent as extremely fertile, and which at present are highly cultivated. Muratori Antiquitates Italicæ Medii Ævii, dissert.xxi.v. ii. p. 149. 153, &c. A strong proof of this occurs in a description of the city of Modena, by an author of the tenth century. Murat. Scrip. Rerum Italic. vol. ii. pars ii. p. 691. The state of

desolation in other countries of Europe seems to have been the same. In many of the most early charters now extant, the lands granted to monasteries, or to private persons, are distinguished into such as are cultivated or inhabited, and such as were eremi, desolate. In many instances, lands are granted to persons because they had taken them from the desert, ab eremo, and had cultivated and planted them with inhabitants. This appears from a charter of Charlemagne. published by Eckhart de Rebus Franciæ Orientalis, vol. ii. p. 864. and from many charters of his successors quoted by Du Cange, voc. eremus.—Wherever a right of property in land can be thus acquired, it is evident that the country must be extremely desolate and thinly peopled. The first settlers in America obtained possessions of land by such a title. Whoever was able to clear and to cultivate a field, was recognised as the proprietor. His industry merited such a The grants in the charters which I have recompense. mentioned flow from a similar principle, and there must have been some resemblance in the state of the countries.

Muratori adds, that during the eighth and ninth centuries, Italy was greatly infested by wolves and other wild beasts; another mark of its being destitute of inhabitants. Murat. Antiq. vol. ii. p. 163. Thus Italy, the pride of the ancient world for its fertility and cultivation, was reduced to the state of a country newly peopled, and lately rendered

habitable.

I am sensible, not only that some of these descriptions of the devastations which I have quoted may be exaggerated, but that the barbarous tribes, in making their settlements, did not proceed invariably in the same manner. Some of them seemed to be bent on exterminating the ancient inhabitants; others were more disposed to incorporate with them. It is not my province either to inquire into the causes which occasioned this variety in the conduct of the conquerors, or to describe the state of those countries where the ancient inhabitants were treated most mildly. The facts which I have produced are sufficient to justify the account soich I have given in the text, and to prove, that the destruction of the human species, occasioned by the hostile invasions of the northern nations, and their subsequent settlements, was much greater than many anthors seem to imagine.

### Note VI. Sect. I. p. 19. [F]

I HAVE observed, Note II., that our only certain information concerning the ancient state of the barbarous nations must be derived from the Greek and Roman writers. Happily an account of the institutions and customs of one people, to which those of all the rest seem to have been in a great measure similar, has been transmitted to us by two authors, the most capable perhaps that ever wrote, of observing them with profound discernment, and of describing them with propriety and force. The reader must perceive that Cæsar and Tacitus are the authors whom I have in view. The former gives a short account of the ancient Germans in a few chapters of the sixth book of his Commentaries: the latter wrote a treatise expressly on that subject. These are the most precious and instructive monuments of antiquity to the present inhabitants of Europe.

From them we learn.

1. That the state of society among the ancient Germans was of the rudest and most simple form. They subsisted entirely by hunting or by pasturage. Cæs. lib. vi. c. 21. They neglected agriculture, and lived chiefly on milk, cheese, and flesh. Ibid. c. 22. Tacitus agrees with him in most of these points: De Morib. Germ. c. 14, 15. 23. The Goths were equally negligent of agriculture. Prisc. Rhet. ap. Byz. Script. v. i. p. 31. B. Society was in the same state among the Huns, who disdained to cultivate the earth, or to touch a plough. Amm. Marcel. lib. xxxi. p. 475. The same manners took place among the Alans; ibid. p. 477. While society remains in this simple state, men, by uniting together, scarcely relinquish any portion of their natural independence. Accordingly we are informed, 2. That the authority of civil government was extremely limited among the Germans. During times of peace they had no common or fixed magistrate, but the chief men of every district dispensed justice, and accommodated differences. Cæs. ibid. c. 23. Their kings nad not absolute or unbounded power; their authority consisted rather in the privilege of advising, than in the power of commanding. Matters of small consequence were determined by the chief men; affairs of importance by the whole community. Tacit. c. 7. 11. The Huns, in like manner, deliberated in common concerning every business of moment to the society'; and were not subject to the rigour of regal autho-

rity. Amm. Marcel. lib. xxxi. p. 474. 3. Every individual among the ancient Germans was left at liberty to choose whether he would take part in any military enterprise which was proposed; there seems to have been no obligation to engage in it imposed on him by public authority. "When any of the chief men proposes an expedition, such as approve of the cause and of the leader rise up and declare their intention of following him; after coming under this engagement, those who do not fulfil it are considered as deserters and traitors, and are looked upon as infamous." Cæs. ibid. c. 23. Tacitus plainly points at the same custom, though in terms more obscure. Tacit. c. 11. 4. As every individual was so independent. and master in so great a degree of his own actions, it became of consequence the great object of every person among the Germans who aimed at being a leader, to gain adherents, and attach them to his person and interest. These adherents Cæsar calls Ambacti and Clientes, i. e. retainers or clients; Tacitus, Comites, or companions. chief distinction and power of the leaders consisted in being attended by a numerous band of chosen youth. This was their pride as well as ornament during peace, and their The leaders gained or preserved the defence in war. favour of these retainers by presents of armour and of horses; or by the profuse though inelegant hospitality with which they entertained them. Tacit. c. 14, 15. 5. Another consequence of the personal liberty and independence which the Germans retained, even after they united in society, was their circumscribing the criminal jurisdiction of the magistrate within very narrow limits, and their not only claiming but exercising almost all the rights of private resentment and revenge. Their magistrates had not the power either of imprisoning or of inflicting any corporal punishment on a free man. Tacit. c. 7. Every person was obliged to avenge the wrongs which his parents or friends had sustained. Their enemies were hereditary, but not irreconcilable. Even murder was compensated by paying a certain number of cattle. Tacit. c. 21. A part of the fine went to the king or state, a part to the person who had been injured, or to his kindred. Ibid. c. 12.

Those particulars concerning the institutions and manners of the Germans, though well known to every person conversant in ancient literature, I have thought proper to arrange in this order, and to lay before such of my readers as may be less acquainted with these facts, both because

they confirm the account which I have given of the state of the barbarous nations, and because they tend to illustrate all the observations I shall have occasion to make concerning the various changes in their government and customs. The laws and customs introduced by the barbarous nations into their new settlements, are the best commentary on the writings of Cæsar and Tacitus; and their observations are the best key to a perfect knowledge of these laws and customs.

One circumstance with respect to the testimonies of Cæsar and Tacitus concerning the Germans merits attention. Cæsar wrote his brief account of their manners more than a hundred years before Tacitus composed his Treatise De Moribus Germanorum. A hundred years make a considerable period in the progress of national manners. especially if, during that time, those people who are rude and unpolished have had much communication with more civilized states. This was the case with the Germans. Their intercourse with the Romans began when Cæsar crossed the Rhine, and increased greatly during the interval between that event and the time when Tacitus flourished. We may accordingly observe, that the manners of the Germans, in his time, which Cæsar describes, were less improved than those of the same people as delineated by Tacitus. Besides this, it is remarkable that there was a considerable difference in the state of society among the different tribes of Germans. The Suiones were so much improved, that they began to be corrupted. Tacit. cap. 44. The Fenni were so barbarous, that it is wonderful how they were able to subsist. Ibid. cap. 46. Whoever undertakes to describe the manners of the Germans, or to found any political theory upon the state of society among them, ought carefully to attend to both these circumstances.

Before I quit this subject, it may not be improper to observe, that, though successive alterations in their institutions, together with the gradual progress of refinement, have made an entire change in the manners of the various people who conquered the Roman empire, there is still one race of men nearly in the same political situation with theirs, when they first settled in their new conquests; I mean the various tribes and nations of savages in North America. It cannot then be considered either as a digression, or as an improper indulgence of curiosity, to inquire whether this similarity in their political state has

occasioned any resemblance between their character and manners. If the likeness turns out to be striking, it is a stronger proof that a just account has been given of the ancient inhabitants of Europe, than the testimony even of Cæsar or of Tacitus.

1. The Americans subsist chiefly by hunting and fishing. Some tribes neglect agriculture entirely. Among those who cultivate some small spot near their huts, that, together with all works of labour, is performed by the women. Charlevoix Journal Historique d'un Voyage de l'Amerique. 4to. Par. 1744. p. 334. In such a state of society, the common wants of men being few, and their mutual dependance upon each other small, their union is extremely imperfect and feeble, and they continue to enjoy their natural liberty almost unimpaired. It is the first idea of an American. that every man is born free and independent, and that no power on earth hath any right to diminish or circumscribe his natural liberty. There is hardly any appearance of subordination either in civil or domestic government. Every one does what he pleases. A father and mother live with their children, like persons whom chance has brought together, and whom no common bould unites. Their manner of educating their children is suitable to this principle. They never chastise or punish them, even during their infancy. As they advance in years, they continue to be entirely masters of their own actions, and seem not to be conscious of being responsible for any part of their conduct. Ibid. p. 272, 273.—2. The power of their civil magistrates is extremely limited. Among most of their tribes, the Sachem or chief is elective. A council of old men is chosen to assist him, without whose advice he determines no affair of importance. The Sachems neither possess nor claim any great degree of authority. They propose and entreat, rather than command. The obedience of their people is altogether voluntary. Ibid. p. 266. 268.—3. The savages of America engage in their military enterprises not from constraint but choice. war is resolved, a chief arises, and offers himself to be the leader. Such as are willing '(for they compel no person) stand up one after another, and sing their war-song. But if, after this, any of these should refuse to follow the leader to whom they have engaged, his life would be in danger, and he would be considered as the most infamous of men. Ibid. p. 217, 218.—4. Such as engage to follow any leader. expect to be treated by him with great attention and respect; and he is obliged to make them presents of considerable value. Ibid. p. 218.-5. Among the Americans, the magistrate has scarcely any criminal jurisdiction. Ibid. p. 272. Upon receiving any injury, the person or family offended may inflict what punishment they please on the person who was the author of it. Ibid. p. 274. Their resentment and desire of vengeance are excessive and implacable. Time can neither extinguish nor abate it. It is the chief inheritance parents leave to their children; it is transmitted from generation to generation, until an occasion be found of satisfying it. Ibid. p. 309. Sometimes, however, the offended party is appeased. A compensation is paid for a murder that has been committed. The relations of the deceased receive it: and it consists most commonly of a captive taken in war, who being substituted in place of the person who was murdered, assumes his name, and is adopted into his family. Ibid. p. 274. The resemblance holds in many other particulars. It is sufficient for my purpose to have pointed out the similarity of those great features which distinguish and characterize both people. Bochart, and other philologists of the last century, who, with more erudition than science, endeavoured to trace the migrations of various nations, and who were apt, upon the slightest appearance of resemblance, to find an affinity between nations far removed from each other, and to conclude that they were descended from the same ancestors, would hardly have failed, on viewing such an amazing similarity, to pronounce with confidence, "That the Germans and Americans must be the same people." But a philosopher will satisfy himself with observing, "That the characters of nations depend on the state of society in which they live, and on the political institutions established among them; and that the human mind, whenever it is placed in the same situation, will, in ages the most distant, and in countries the most remote, assume the same form, and be distinguished by the same manners.

I have pushed the comparison between the Germans and Americans no farther than was necessary for the illustration of my subject. I do not pretend that the state of society in the two countries was perfectly similar in every respect. Many of the German tribes were more civilized than the Americans. Some of them were not unacquainted with agriculture; almost all of them had flocks of tame cattle, and depended upon them for the chief part of their subsistence. Most of the American tribes subsist by hunt-

ing, and are in a ruder and more simple state than the ancient Germans. The resemblance, however, between their condition is greater, perhaps, than any that history affords an opportunity of observing between any two races of uncivilized people, and this has produced a surprising similarity of manners.

## Note VII. Sect. I. p. 19. [G]

THE booty gained by an army belonged to the army. The king himself had no part of it but what he acquired by lot. A remarkable instance of this occurs in the history of the Franks. The army of Clovis, the founder of the French monarchy, having plundered a church, carried off, among other sacred utensils, a vase of extraordinary size and beauty. The bishop sent deputies to Clovis, beseeching him to restore the vase, that it might be again employed in the sacred services to which it had been consecrated. Clovis desired the deputies to follow him to Soissons, as the booty was to be divided in that place; and promised, that, if the lot should give him the disposal of the vase, he would grant what the bishop desired. When he came to Soissons, and all the booty was placed in one great heap in the middle of the army, Clovis entreated that, before making the division, they would give him that vase over and above his share. All appeared willing to gratify the king, and to comply with his request, when a fierce and haughty soldier lifted up his battle-axe, and striking the vase with the utmost violence, cried out with a loud voice, "You shall receive nothing here but that to which the lot gives you a right." Gregor. Turon. Histor. Francorum, lib. ii. c. 27. p. 70. Par. 1610.

#### Note VIII. Sect. I. p. 22. [H]

The history of the establishment and progress of the feudal system is an interesting object to all the nations of Europe. In some countries, their jurisprudence and laws are still in a great measure feudal. In others, many forms and practices established by custom, or founded on statutes, took their rise from the feudal law, and cannot be understood without attending to the ideas peculiar to it. Several authors of the highest reputation for genius and erudition have endeavoured to illustrate this subject, but still many parts of it are obscure. I shall endeavour to trace,

with precision, the progress and variation of ideas concerning property in land among the barbarous nations; and shall attempt to point out the causes which introduced these changes, as well as the effects which followed upon them. Property in land seems to have gone through four successive changes among the people who settled in the various provinces of the Roman empire.

I. While the barbarous nations remained in their original countries, their property in land was only temporary. and they had, no certain limits to their possessions. After feeding their flocks in one district, they removed with them, and with their wives and families, to another; and abandoned that likewise in a short time. They were not, in consequence of this imperfect species of property, brought under any positive or formal obligation to serve the community; all their services were purely voluntary. Every individual was at liberty to choose how far he would contribute towards carrying on any military enterprise. If he followed a leader in any expedition, it was from attachment, not from a sense of obligation. The clearest proof of this has been produced in Note VI. While property continued in this state, we can discover nothing that bears any resemblance to a feudal tenure, or to the subordination and military service which the feudal system introduced.

II. Upon settling in the countries which they had subdued, the victorious troops divided the conquered lands. Whatever portion of them fell to a soldier, he seized as the recompense due to his valour, as a settlement acquired by his own sword. He took possession of it as a freeman, in full property. He enjoyed it during his own life, and could dispose of it at pleasure, or transmit it as an inheritance to his children. Thus property in land became fixed. It was at the same time allodial; i. e. the possessor had the entire right of property and dominion; he held of no sovereign or superior lord, to whom he was bound to do homage, and perform service. But as these new proprietors were in some danger (as has been observed in the text) of being disturbed by the remainder of the ancient inhabitants, and in still greater danger of being attacked by successive colonies of barbarians as fierce and rapacious as themselves, they saw the necessity of coming under obligations to defend the community, more explicit than those to which they had been subject in their original habitations. this account, immediately upon their fixing in their new settlements, every freeman became bound to take arms in

defence of the community, and, if he refused or neglected so to do, was liable to a considerable penalty. I do not mean that any contract of this kind was formally concluded, or mutually ratified by any legal solemnity. It was established by tacit consent, like the other compacts which hold society together. Their mutual security and preservation made it the interest of all to recognise its authority. and to enforce the observation of it. We can trace back this new obligation on the proprietors of land to a very early period in the history of the Franks. Chilperic, who began his reign A.D. 562, exacted a fine, bannos jussit exigi, from certain persons who had refused to accompany him in an expedition. Gregor. Turon. lib. v. c. 26. p. 211. Childebert, who began his reign A.D. 576, proceeded in the same manner against others who had been guilty of a like crime. Ibid. lib. vii. c. 42. p. 342. Such a fine could not have been exacted while property continued in its first state, and military service was entirely voluntary. Charlemagne ordained, that every freeman who possessed five mansi, i. e. sixty acres of land, in property, should march in person against the enemy. Capitul. A. D. 807. Louis le Debonnaire, A.D. 815, granted lands to certain Spaniards who fled from the Saracens, and allowed them to settle in his territories, on condition that they should serve in the army like other freemen. Capitul. vol. i. p. 500. By land possessed in property, which is mentioned in the law of Charlemagne, we are to understand, according to the style of that age, allodial land; alodes and proprietas, alodum and proprium, being words perfectly synonimous. Cange, voce alodis. The clearest proof of the distinction between allodial and beneficiary possession is contained in two charters published by Muratori, by which it appears, that a person might possess one part of his estate as allodial, which he could dispose of at pleasure, the other as a beneficium, of which he had only the usufruct, the property returning to the superior lord on his demise. Antiq. Ital. Medii Ævi, vol. i. p. 559. 565. The same distinction is pointed out in a Capitulare of Charlemagne, A. D. 812. edit. Baluz. vol. i. p. 491. Count Everard, who married a daughter of Louis le Debonnaire, in the curious testament by which he disposes of his vast estate among his children. distinguishes between what he possessed proprietate, and what he held beneficio; and it appears that the greater part was allodial. A.D. 837. Aub. Miræi Opera Diplomática. Lovan, 1723, vol. p. 19.

In the same manner Liber homo is commonly opposed to Vassus or Vassallus; the former denotes an allodial proprietor, the latter one who held of a superior. These free men were under an obligation to serve the state; and this duty was considered as so sacred, that freemen were prohibited from entering into holy orders, unless they had obtained the consent of the sovereign. The reason given for this in the statute is remarkable. " For we are informed that some do so, not so much out of devotion, as in order to avoid that military service which they are bound to perform. Capitul. lib. i. § 114. If, upon being summoned into the field, any freeman refused to obey, a full herebannum, i.e. a fine of sixty crowns, was to be exacted from him, according to the law of the Franks." Capit. Car. Magn. ap. Leg. Longob. lib. i. tit. 14. § 13. p. 539. This expression, according to the law of the Franks, seems to imply that both the obligation to serve, and the penalty on those who disregarded it, were coëval with the laws made by the Franks, at their first settlement in Gaul. This fine was levied with such rigour, "That if any person convicted of this crime was insolvent, he was reduced to servitude, and continued in that state until such time as his labour should amount to the value of the herebannum." Ibid. The emperor Lotharius rendered the penalty still more severe; and if any person, possessing such an extent of property as made it incumbent on him to take the field in person, refused to obey the summons, all his goods were declared to be forfeited, and he himself might be punished with banishment. Murat. Script. Ital. vol. i. pars ii. p. 153.

III. Property in land having thus become fixed, and subject to military service, another change was introduced. though slowly, and step by step. We learn from Tacitus. that the chief men among the Germans endeavoured to attach to their persons and interests certain adherents which he calls Comites. These fought under their standard, and followed them in all their enterprises. The same custom continued among them in their new settlements, and those attached or devoted followers were called fideles, antrustiones, homines in truste Dominica, leudes. Tacitus informs us, that the rank of a Comes was deemed honourable; De Morib. Germ. c. 13. The composition, which is the standard by which we must audge of the rank and condition of persons in the middle ages, paid for the murder of one in truste Dominica, was triple to that paid for the murder of a freeman. Leg. Salicor. Tit. 44. § 1 and 2. While the

Germans remained in their own country, they courted the favour of these Comites by presents of arms and horses. and by hospitality. See Note VI. As long as they had no fixed property in land, these were the only gifts that they could bestow, and the only reward which their followers desired. But upon their settling in the countries which they had conquered, and when the value of property came to be understood among them, instead of those slight presents, the kings and chieftains bestowed a more substantial recompense in land on their adherents. These grants were called beneficia, because they were gratuitous donatious: and honores, because they were regarded as marks of distinction. What were the services originally exacted for these beneficia cannot be determined with absolute precision, because there are no records so ancient. When allodial possessions were first rendered feudal, they were not at once subjected to all the feudal services. The transition here, as in all other changes of importance, was gradual. As the great object of a feudal vassal was to obtain protection, when allodial proprietors first consented to become vassals of any powerful leader, they continued to retain as much of their ancient independence as was consistent with The homage which they did to the that new relation. superior of whom they chose to hold, was called homagium planum, and bound them to nothing more than fidelity. but without any obligation either of military service, or attendance in the courts of their superior. Of this homagium planum some traces, though obscure, may still be discovered. Brussel, tom. i. p. 97. Among the ancient writs published by D.D. De Vic and Vaisette Hist. de Langued. are a great many which they call homagia. seem to be an intermediate step between the homagium planum mentioned by Brussel, and the engagement to perform complete feudal service. The one party promises protection, and grants certain castles or lands; the other engages to defend the person of the granter, and to assist him likewise in defending his property as often as he shall be summoned to do so. But these engagements are accompanied with none of the feudal formalities, and no mention is made of any of the other feudal services. They appear rather to be a mutual contract between equals, than the engagement of a vassal to perform services to a superior lord. Preuves de l'Hist. Ge Lang. tom. ii. 173, et passion. As soon as men were accustomed to these, the other feudal services were gradually introduced. M. de Montesquicu

considers these beneficia as fiefs, which originally subjected those who held them to military service. L'Esprit des Loix, l. xxx. c. 3 and 16. M. l'Abbé de Mably contends, that such as held these were at first subjected to no other service than what was incumbent on every free man. servations sur l'Histoire de France, i. 356.—But, upon comparing their proofs and reasonings and conjectures, it seems to be evident, that as every free man, in consequence of his allodial property, was bound to serve the community under a severe penalty, no good reason can be assigned for conferring these beneficia, if they did not subject such as received them to some new obligation. Why should a king have stripped himself of his domain, if he had not expected that, by parcelling it out, he might acquire a right to services to which he had formerly no title? We may then warrantably conclude, "That as allodial property subjected those who possessed it to serve the community, so beneficia subjected such as held them to personal service and fidelity to him from whom they received these lands. These beneficia were originally granted only during pleasure. No circumstance relating to the customs of the middle ages is better ascertained than this; and innumerable proofs of it might be added to those produced in L'Esprit des Loix, l. xxx. c. 16. and by Du Cange, voc. beneficium et feudum.

IV. But the possession of benefices did not continue long in this state. A precarious tenure during pleasure was not sufficient to satisfy such as held lands, and by various means they gradually obtained a confirmation of their benefices during life. Feudor. lib. tit. i. Du Cange produces several quotations from ancient charters and chronicles in proof of this; Glos. voc. Beneficium. After this it was easy to obtain or extort charters rendering beneficial hereditary, first in the direct line, then in the collateral, and at last in the female line. Leg. Longob. lib. iii. tit. 8.

Du Cange, voc. Beneficium.

It is no easy matter to fix the precise time when each of these changes took place. M. l'Ab. Mably conjectures, with some probability, that Charles Martel first introduced the practice of granting beneficia for life; Observat, tom. i. p. 103. 160; and that Louis le Debonnaire was among the first who rendered them hereditary, is evident from the authorities to which he refers; Ibid. 429. Mabillon however has published a placitum of Irouis le Debonnaire, A. D. 860, by which it appears, that he still continued to grant some beneficia only during life. De Re Diplomatica, lib. vi.

p. 353. In the year 889, Odo, king of France, granted lands to Ricabodo, fideli suo, jure beneficiario et fructuario, during his own life; and if he should die, and a son were born to him, that right was to continue during the life of his son. Mabillon ut supra, p 556. This was an intermediate step between fiefs immediately during life, and fiefs hereditary to perpetuity. While beneficia continued under their first form, and were held only during pleasure, he who granted them not only exercised the dominium or prerogative of superior lord, but he retained the property, giving his vassal only the usufruct. But under the latter form, when they became hereditary, although feudal lawyers continued to define a beneficium agreeably to its original nature, the property was in effect taken out of the hands of the superior lords, and lodged in those of the vassal. As soon as the reciprocal advantages of the feudal mode of tenure came to be understood by superiors as well as vassals. that species of holding became so agreeable to both, that not only lands, but casual rents, such as the profits of a toll. the fare paid at ferries, &c. the salaries or perquisites of offices, and even pensions themselves, were granted and held as fiefs: and military service was promised and exacted on account of these. Morice Mem. pour servir de preuves à l'Hist. de Bretagne, tom. ii. 78. 690. tom. i. p. 41. How absurd soever it may seem to grant or to hold such precarious and casual property as a fief. there are instances of feudal tenures still more singular. The profits arising from the masses said at an altar were properly an ecclesiastical revenue, belonging to the clergy of the church or monastery which performed that duty: but these were sometimes seized by the powerful barons. order to ascertain their right to them, they held them as fiefs of the church, and parcelled them out in the same manner as other property to their sub-vassals. Bouquet, Recueil des Hist. vol. x. 238. 480. The same spirit of encroachment which rendered fiefs hereditary, led the nobles to extort from their sovereigns hereditary grants of offices. Many of the great offices of the crown became hereditary in most of the kingdoms in Europe; and so conscious were monarchs of this spirit of usurpation among the nobility, and so solicitous to guard against it, that, on some occasions, they obliged the persons whom they promoted to any office of dignity, to grant an obligation, that neither they nor their heirs should claim it as belonging to them by hereditary right. A remarkable instance of this is produced.

Mem. de l'Acad. des Inscript. tom. xxx. p. 595. Another occurs in the Thesaur. Anecdot. published by Martene and Durand, vol. i. p. 873.—This revolution in property occasioned a change corresponding to it in political government; the great vassals of the crown, as they acquired such extensive possessions, usurped a proportional degree of power, depressed the jurisdiction of the crown, and trampled on the privileges of the people. It is on account of this connexion that it becomes an object of importance in history to trace the progress of feudal property; for, upon discovering in what state property was at any particular period, we may determine with precision what was the degree of power possessed by the king or by the nobility at that juncture.

One circumstance more, with respect to the changes which property underwent, deserves attention. I have shewn, that when the various tribes of barbarians divided their conquests in the fifth and sixth centuries, the property which they acquired was allodial; but in several parts of Europe, property had become almost entirely feudal by the beginning of the tenth century. The former species of property seems to be so much better and more desirable than the latter, that such a change appears surprising, especially when we are informed that allodial property was frequently converted into feudal, by a voluntary deed of the possessor. The motives which determined them to a choice so repugnant to the ideas of modern times concerning property, have been investigated and explained by M. de Montesquieu, with his usual discernment and accuracy, lib. xxxi. c. 8. The most considerable is that of which we have a hint in Lambertus Ardensis, an ancient writer quoted by Du Cange, voce Alodis. In those times of anarchy and disorder which became general in Europe after the death of Charlemagne, when there was scarcely any union among the different members of the community. and individuals were exposed, single and undefended by government, to rapine and oppression, it became necessary for every man to have a powerful protector, under whose banner he might range himself, and obtain security against enemies whom singly he could not oppose. For this reason he relinquished his allodial independence, and subjected himself to the feudal services, that he might find safety under the patronage of some respectable superior. some parts of Europe, this change from allodial to feudal property became so general, that he who possessed land had

no longer any liberty of choice left. He was obliged to recognise some liege lord, and to hold of him. Thus Beanmanoir informs us, that in the counties of Clermont and Beauvois, if the lord or count discovered any lands within his jurisdiction for which no service was performed, and which paid to him no taxes or customs, he might instantly seize it as his own; for, says he, according to our custom no man can hold allodial property. Coust. ch. 24, p. 123. Upon the same principle is founded a maxim, which has at length become general in the law of France, Nulle terre sans Seigneur. In other provinces of France, allodial property seems to have remained longer unalienated, and to have been more highly valued. A great number of charters. containing grants, or sales, or exchanges of allodial lands in the province of Languedoc, are published, Hist. Gener. de Langued. par D. D. De Vic et Vaisette, tom. ii. During the ninth, tenth, and great part of the eleventh century, the property in that part seems to have been entirely allodial: and scarcely any mention of feudal tenures occurs in the deeds of that country. The state of property, during these centuries, seems to have been perfectly similar in Catalonia and the country of Rousillon, as appears from the original charters published in the Appendix to Petr. de la Marca's Treatise de Marca sive Limite Hispanico. Allodial property seems to have continued in the Low Countries to a period still later. During the eleventh, twelfth, and thirteenth centuries, this species of property appears to have been of considerable extent. Miræi Opera Diplom. vol. i. 34, 74. 75. 83. 817. 296. 842. 847. 578. Some vestiges of allodial property appear there as late as the fourteenth century. Ibid. 218. Several facts which prove that allodial property subsisted in different parts of Europe long after the introduction of feudal tenures, and which tend to illustrate the distinction between these two different species of possession, are produced by M. Houard, Anciennes Loix des François, conservées dans les Coutumes Angloises, vol. i. p. 192, &c. The notions of men with respect to property vary according to the diversity of their understandings, and the caprice of their passions. - At the same time that some persons were fond of relinquishing allodial property, in order to hold it by feudal tenure, others seem to have been solicitous to convert their fiefs into allodial property. instance of this occurs in a charter-of Louis le Debonnaire. published by Eckhard, Commentarii de Rebus Franciæ Orientalis, vol. ii. p. 885. Another occurs in the year 1299.

Reliquiæ MSS. omnis ævi, by Ludwig, vol. i. p. 209; and even one as late as the year 1337, ibid. vol. vii. p. 40. The same thing took place in the Low Countries. Miræi Oper. i. 52.

In tracing these various revolutions of property, I have hitherto chiefly confined myself to what happened in France, because the ancient monuments of that nation have either been more carefully preserved, or have been more clearly

illustrated, than those of any people in Europe.

In Italy, the same revolutions happened in property, and succeeded each other in the same order. There is some ground for conjecturing, that allodial property continued longer in estimation among the Italians than among the French. It appears that many of the charters granted by the emperors in the ninth century, conveyed an allodial right to land. Murat. Antiq. Med. Ævi, v. i. p. 575, &c. But in the eleventh century, we find some examples of persons who resigned their allodial property, and received it back as a feudal tenure. Ibid. p. 610, &c. Muratori observes, that the word feudum, which came to be substituted in place of beneficium, does not occur in any authentic charter previous to the eleventh century. Ibid. 594. A. charter of king Robert of France, A. D. 1008, is the earliest deed in which I have met with the word feudum. Bouquet Recueil des Historiens de Gaule et de la France, tom. x. p. 593, b. This word occurs in an edict, A. D. 790, published by Brussel, vol. i. p. 77. But the authenticity of that deed has been called in question, and perhaps the frequent use of the word feudum in it is an additional reason for doing so. The account which I have given of the nature both of allodial and feudal possessions receives some confirmation from the etymology of the words themselves. Alode or allodium is compounded of the German particle an and lot, i. e. land obtained by lot. Wachteri Glossar. Germanicum, voc. Allodium, p. 35. It appears from the authorities produced by him and by Du Cange, voc. Sors, that the northern nations divided the lands which they had conquered in this manner. Feodum is compounded of od, possession or estate, and feo, wages, pay; intimating that it was stipendiary, and granted as a recompense for service. Wachterus, ibid. voc. Feodum, p. 441.

The progress of the feudal system among the Germans was perfectly similar to that which we have traced in France. But as the emperors of Germany, especially after the Imperial crown passed from the descendants of Charlemagne

to the house of Saxony, were far superior to the contemporary monarchs of France in abilities, the Imperial vassals did not aspire so early to independence, nor did they so soon obtain the privilege of possessing their benefices by hereditary right. According to the compilers of the Libri Feudorum, Conrad II., or the Salic, was the first emperor who rendered fiefs hereditary. Lib. i. tit. i. Conrad began his reign A. D. 1024. Ludovicus Pius, under whose reign grants of hereditary fiefs were frequent in France, succeeded his father A. D. 814. Not only was this innovation so much later in being introduced among the vassals of the German emperors, but even after Conrad had established it, the law continued favourable to the ancient practice: and unless the charter of the vassal bore expressly that the fief descended to his heirs, it was presumed to be granted only during life. Lib. Feud. ibid. Even after the alteration made by Conrad, it was not uncommon in Germany to grant fiefs only for life; a charter of this kind occurs as late as the year 1376. Charta ap. Boehmer. Princip. Jur. Feud. p. 361. The transmission of fiefs to collateral and female heirs took place very slowly among the Germans. There is extant a charter, A.D. 1201, conveying the right of succession to females; but it is granted as an extraordinary mark of favour, and in reward of uncommon services. Boehmer, ibid. p. 365. In Germany, as well as in France and Italy, a considerable part of the lands continued to be allodial long after the feudal mode of tenure was introduced. It appears from the Codex Diplomaticus Monasterii Buch, that a great part of the lands in the marquisate of Misnia was still allodial as late as the thirteenth century. Nos. 31. 36, 37. 46, &c. ap. Scriptores Hist. German. cura Schoetgenii et Kreysigii. Altenb. 1755. vol. ii. 183, &c. Allodial property seems to have been common in another district of the same province during the same period. Reliquiæ Diplomaticæ Sanctimonial. Beutiz. Nos. 17. 36. 58. ibid. 374, &c.

#### Note IX. Sect. I. p. 23. [I]

As I shall have occasion in another Note to represent the condition of that part of the people who dwelt in citics, I will confine myself to this to consider the state of the inhabitants of the country. The persons employed in cultivating the ground during the ages under review may be divided into three classes: I. Servi or slaves. This seems to have been the most numerous class, and consisted either

of captives taken in war or of persons the property in whom was acquired in some one of the various methods enumerated by Du Cange, voc. Servus, v. 6. p. 447. The wretched condition of this numerous race of men will appear from several circumstances. 1. Their masters had absolute dominion over their persons. They had the power of punishing their slaves capitally, without the intervention of any judge. This dangerous right they possessed not only in the more early periods, when their manners were fierce, but it continued as late as the twelfth century. Joach. Potgiesserus de Statu Servorum. Lemgov. 1736. 4to. lib. ii. cap. i. § 4. 10. 13. 24. Even after this jurisdiction of masters came to be restrained, the life of a slave was deemed to be of so little value, that a very slight compensation atoned for taking it away. Idem. lib. iii. c. 6. If masters had power over the lives of their slaves, it is evident that almost no bounds would be set to the rigour of the punishments which they might inflict upon them. The codes of ancient laws prescribed punishments for the crimes of slaves different from those which were inflicted on free men. The latter paid only a fine or compensation; the former were subjected to corporal punishments. The cruelty of these was, in many instances, excessive. Slaves might be put to the rack on very slight occasions. The laws with respect to these points are to be found in Potgiesserus, lib. iii. cap. 7. 2. and are shocking to humanity. If the dominion of masters over the lives and persons of their slaves was thus extensive, it was no less so over their actions and property. They were not originally permitted to marry. Male and female slaves were allowed, and even encouraged, to cohabit together. But this union was not considered as a marriage; it was called contubernium, not nuptiæ or matrimonium. Potgiess. lib. ii. c. 2. § 1. This notion was so much established, that, during several centuries after the barbarous natious embraced the Christian religion, slaves, who lived as husband and wife, were not joined together by any religious ceremony, and did not receive the nuptial benediction from a priest. Ibid. § 10, 11. When this conjunction between slaves came to be considered as a lawful marriage, they were not permitted to marry without the consent of their master and such as ventured to do so, without obtaining that, were punished with great severity, and sometimes were put to death, Potgiess. ibid. § 12, &c. Gregor. Turon. Hist. lib. v. c. 3. When the manners of the European nations became more gentle, and their ideas more liberal, slaves who married without their master's consent were subjected only to a fine. Potgiess, ibid. § 20. Du Cange Gloss. voc. Forismaritagium. 3. All the children of slaves were in the same condition with their parents, and became the property of the master. Du Cange Gloss. voc. Servus. vol. vi. 450. Murat. Antiq. Ital. vol. i. 766. 4. Slaves were so entirely the property of their masters, that they could sell them at pleasure. While domestic slavery continued, property in a slave was sold in the same manner with that which a person had in any other moveable. Afterward slaves became adscripti glebæ, and were conveyed by sale, together with the farm or estate to which they belonged. Potgiesserus has collected the laws and charters which illustrate this well-known circumstance in the condition of slaves. Lib. ii. c. 4. 5. Slaves had a title to nothing but subsistence and clothes from their master; all the profits of their labour accrued to him. If a master, from indulgence, gave his slaves any peculium, or fixed allowance for their subsistence, they had no right of property in what they saved out of that. All that they accumulated belonged to their master. Potgiess. lib. ii. c. 10. Murat. Antiq. Ital. vol. i. 768. Cange, voc. Servus, vol. vi. p. 451. Conformably to the same principle, all the effects of slaves belonged to their master at their death, and they could not dispose of them by testament. Potgiess. lib. ii. c. 11. 6. Slaves were distinguished from free men by a peculiar dress. Among all the barbarous nations, long hair was a mark of dignity and of freedom; slaves were, for that reason, obliged to shave their heads; and by this distinction, how indifferent soever it may be in its own nature, they were reminded every moment of the inferiority of their condition. Potgiess. lib. iii. c. 4. For the same reason it was enacted in the laws of almost all the nations of Europe, that no slave should be admitted to give evidence against a free man in a court of justice. Cange, voc. Servus, vol. vi. p. 451. Potgiess. lib. iii. c. 3.

2. Villani. They were likewise adscripti glebæ or villæ, from which they derived their name, and were transferable along with it. Du Cange, voc. Villanus. But in this they differed from slaves, that they paid a fixed rent to their master for the land which they cultivated, and, after paying that, all the fruits of their labour and industry belonged to themselves in property. This distinction is marked by Piere de Fontain's Conseil. Vie de St. Louis par Joinville, p. 119. edit. de Du Cange. Several cases decided agreeable to this principle are mentioned by Murat, ibid. p. 773.

3. The last class of persons employed in agriculture were free men. These are distinguished by various names among the writers of the middle ages, arimanni, conditionales, originarii, tributales, &c. These seem to have been persons who possessed some small allodial property of their own, and besides that cultivated some farm belonging to their more wealthy neighbours, for which they paid a fixed rent; and bound themselves likewise to perform some small services in prato vel in messe, in aratura vel in vinea, such as ploughing a certain quantity of their landlord's ground, assisting him in harvest and vintage work, &c. The clearest proof of this may be found in Muratori, vol. i. p. 712, and in Du Cange, under the respective words above mentioned. I have not been able to discover whether these arimanni. &c. were removeable at pleasure, or held their farms by lease for a certain number of years. The former, if we may judge from the genius and maxims of the age, seems to be most probable. These persons, however, were considered as free men in the most honourable sense of the word; they enjoyed all the privileges of that condition, and were even called to serve in war; an honour to which no slave was admitted. Murat. Antig. vol. i. p. 743; vol. ii. p. 446. This account of the condition of these three different classes of persons will enable the reader to apprehend the full force of an argument which I shall produce in confirmation of what I have said in the text concerning the wretched state of the people during the middle ages. Notwithstanding the immense difference between the first of these classes and the third, such was the spirit of tyranny which prevailed among the great proprietors of lands, and so various their opportunities of oppressing those who were settled on their estates, and of rendering their condition intolerable, that many free men, in despair, renounced their liberty, and voluntarily surrendered themselves as slaves to their powerful masters. This they did, in order that their masters might become more immediately interested to afford them protection together with the means of subsisting themselves and their families. The forms of such a surrender, or obnoxiatio, as it was then called, are preserved by Marculfus, lib. ii. c. 28; and by the anonymous author, published by M. Bignon, together with the collection of formulæ compiled by Marculfus, c. 16. In both, the reason given for the obnoxiatio, is the wretched and indigent condition of the person who gives up his liberty. It was still more common for free men to surrender their liberty to bishops or abbots,

that they might partake of the security which the vassals and slaves of churches and monasteries enjoyed, in consequence of the superstitious veneration paid to the saint under whose immediate protection they were supposed to be taken. Du Cange, voce Oblatus, vol. iv. p. 1286. That condition must have been miserable indeed, which could induce a free man voluntarily to renounce his liberty, and to give up himself as a slave to the disposal of another. number of slaves in every nation in Europe was immense. The greater part of the inferior class of people in France were reduced to this state at the commencement of the third race of kings. L'Esprit des Loix, liv. xxx. c. 11. The same was the case in England. Brady, Pref. to Gen. Hist. Many curious facts with respect to the ancient state of villains or slaves in England, are published in Observations on the Statutes, chiefly the more ancient, 3d edit. p. 269, &c.

# Note X. Sect. I. p. 25. [K]

INNUMERABLE proofs of this might be produced. Many charters, granted by persons of the highest rank, are preserved, from which it appears that they could not subscribe their name. It was usual for persons who could not write. to make the sign of the cross in confirmation of a charter. Several of these remain, where kings and persons of great eminence affix signum crucis manu propria pro ignoratione literarum. Du Cange, voce Crux, vol. iii. p. 1191. From this is derived the phrase of signing instead of subscribing a paper. In the ninth century, Herbaud Comes Palatii, though supreme judge of the empire by virtue of his office. could not subscribe his name. Nouveau Traité de Diplomatique par deux Benedictins, 4to, tom, ii, p. 422. As late as the fourteenth century, Du Guesclin, constable of France. the greatest man in the state, and one of the greatest men of his age, could neither read nor write. St. Palaye Memoires sur l'ancienne Chevalerie, tit. ii. p. 82. Nor was this ignorance confined to laymen; the greater part of the clergy was not many degrees superior to them in science. Many dignified ecclesiastics could not subscribe the canons of those councils in which they sat as members. Nouv. Traité de Diplom. tom. ii. p. 424. Onc of the questions appointed by the canons to be put to persons who were candidates for orders was this: "Whether they could read the gospels and epistles, and explain the sense of them, at least

literally?" Regino Prumiensis ap. Bruck. Hist. Philos. v. iii. p. 631. Alfred the Great complained, that from the Humber to the Thames there was not a priest who understood the liturgy in his mother-tongue, or who could translate the easiest piece of Latin: and that from the Thames to the sea, the ecclesiastics were still more ignorant. Asserus de Rebus Gestis Alfredi, ap. Camdeni Anglica, &c. p. The ignorance of the clergy is quaintly described by an author of the dark ages: "Potius dediti gulæ quam glossæ; potius colligunt libras quam legunt libros; libentiùs intuentur Martham quam Marcum; malunt legere in Salmone quam in Solomone." Alanus de Art. Predicat. ap. Lebeuf Dissert. tom. ii. p. 21. To the obvious causes of such universal ignorance, arising from the state of government and manners, from the seventh to the eleventh century, we may add the scarcity of books during that period, and the difficulty of rendering them more common. The Romans wrote their books either on parchment or on paper made of the Egyptian papyrus. The latter being the cheapest, was of course the most commonly used. But after the Saracens conquered Egypt in the seventh century, the communication between that country and the people settled in Italy. or in other parts of Europe, was almost entirely broken off, and the papyrus was no longer in use among them. They were obliged, on that account, to write all their books upon parchment, and, as the price of this was high, books became extremely rare, and of great value. We may judge of the scarcity of the materials for writing them from one circumstance. There still remain several manuscripts of the eighth. ninth, and following centuries, written on parchment. from which some former writing had been erased, in order to substitute a new composition in its place. In this manner it is probable that several works of the ancients perished. A book of Livy or of Tacitus might be erased, to make room for the legendary tale of a saint, or the superstitious prayers of a missal. Murat. Antiq. Ital. vol. iii. p. 833. P. de Montfaucon affirms that the greater part of the manuscripts on parchment which he has seen, those of an ancient date excepted, are written on parchment, from which some former treatise had been erased. Mem. de l'Acad. des Inscript. tom. ix. p. 325. As the want of materials for writing is one reason why so many of the works of the ancients have perished, it accounts likewise for the small number of manuscripts of any kind previous to the cleventh century, when they began to multiply, from a cause which

shall be mentioned. Hist. Liter. de France, tom. vi. v. &. Many circumstances prove the scarcity of books during these ages. Private persons seldom possessed any books whatever. Even monasteries of considerable note had only one missal. Murat. Antiq. vol. ix. p. 789. Lupus, abbot of Forrieres, in a letter to the pope, A. D. 855, besceches him to lend him a copy of Cicero de Oratore and Quintilian's Institutions; "for," says he, "although we have parts of those books, there is no complete copy of them in all France." Murat. Ant. v. iii. p. 835. The price of books became so high, that persons of a moderate fortune could not afford to purchase them. The countess of Anjou paid for a copy of the Homilies of Haimon, bishop of Halberstadt, two hundred sheep, five quarters of wheat, and the same quantity of rye and millet. Histoire Literaire de France par des Religieux Benedictins, tom. vii. p. 3. Even so late as the year 1471, when Louis XI. borrowed the works of Rasis, the Arabian physician, from the faculty of medicine in Paris, he not only deposited in pledge a considerable quantity of plate, but was obliged to procure a nobleman to join with him as surety in a deed, binding himself, under a great forfeiture, to restore it. Gabr. Naudè Addit. à l'Histoire de Louys XI. par Comincs, edit. de Fresnoy, tom. iv. p. 281. Many curious circumstances with respect to the extravagant price of books in the middle ages, are collected by that industrious compiler, to whom I refer such of my readers as deem this small branch of literary history an object of curiosity. When any person made a present of a book to a church or monastery, in which were the only libraries during several ages, it was deemed a donative of such value, that he offered it on the altar pro remedio animæ suæ, in order to obtain the forgiveness of his sins. Murat. vol. iii. p. 836. Hist. Liter. de France, tom. vi. p. 6. Nouv. Trait. du Diplomat. par deux Benedictins, 4to. tom. i. p. 481. In the eleventh century, the art of making paper, in the manner now become universal, was invented; by means of that, not only the number of manuscripts increased, but the study of the sciences was wonderfully facilitated. Murat. ib. p. 871. The invention of the art of making paper, and the invention of the art of printing, are two considerable events in literary history. It is remarkable, that the former preceded the first dawning of letters and improvement in knowledge towards the close of the eleventh century; the latter ushered in the light which spread over Europe at the era of the Reformation.

#### Note XI. Sect. I. p. 25. [L]

ALL the religious maxims and practices of the dark ages are a proof of this. I shall produce one remarkable testimony in confirmation of it, from an author canonized by the church of Rome, St. Eloy, or Egidius, bishop of Noyon, in the seventh century. "He is a good Christian who comes frequently to church; who presents the oblation which is offered to God upon the altar; who doth not taste of the fruits of his own industry until he has consecrated a part of them to God; who, when the holy festivals approach, lives chastely even with his own wife during several days, that with a safe conscience he may draw near the altar of God, and who, in the last place, can repeat the Creed and the Lord's Prayer. Redeem then your souls from destruction, while you have the means in your power; offer presents and tithes to churchmen; come more frequently to church; humbly implore the patronage of the saints; for, if you observe these things, you may come with security in the day of retribution to the tribunal of the eternal Judge. and say, Give to us, O Lord, for we have given unto thee." Dacherii Spicelegium Vet. Script. vol. ii. p. 94. The learned and judicious translator of Dr. Mosheim's Ecclesiastical History, to one of whose additional notes I am indebted for my knowledge of this passage, subjoins a very proper reflection: "We see here a large and ample description of a good Christian, in which there is not the least mention of the love of God, resignation to his will, obedience to his laws, or of justice, benevolence, and charity towards men. Mosh. Eccles. Hist. vol. i. p. 324.

### Note. XII. Sect. I. p. 26. [M]

That infallibility in all its determinations to which the church of Rome pretends, has been attended with one unhappy consequence. As it is impossible to relinquish any opinion, or to alter any practice, which has been established by authority that cannot err, all its institutions and ceremonies must be immutable and everlasting, and the church must continue to observe, in enlightened times, those rites which were introduced during the ages of darkness and credulity. What delighted and edified the latter, must disgust and shock the former. Many of the rites observed in the Romish church appear manifestly to have been introduced by a superstition of the lowest and most illiberal

species. Many of them were borrowed, with little variation, from the religious ceremonies established among the ancient Heathens. Some were so ridiculous, that if every age did not furnish instances of the fascinating influence of superstition, as well as of the whimsical forms which it assumes, it must appear incredible that they should have been ever received or tolerated. In several churches of France, they celebrated a festival in commemoration of the Virgin Mary's flight into Egypt. It was called the Feast of A young girl, richly dressed, with a child in her arms, was set upon an ass richly caparisoned. was led to the altar in solemn procession. High mass was said with great pomp. The ass was taught to kneel at proper places; a hymn no less childish than impious was sung in his praise; and when the ceremony was ended. the priest, instead of the usual words with which he dismissed the people, brayed three times like an ass; and the people, instead of the usual response, We bless the Lord, braved three times in the same manner. Du Cange, voc. Festum, vol. iii. p. 424. This ridiculous ceremony was not, like the Festival of Fools, and some other pageants of those ages, a mere farcical entertainment exhibited in a church, and mingled, as was then the custom, with an imitation of some religious rites, it was an act of devotion, performed by the ministers of religion, and by the authority of the church. However, as this practice did not prevail universally in the Catholic church, its absurdity cotributed at last to abolish it.

#### Note XIII. Sect. I. p. 30. [N]

As there is no event in the history of mankind more singular than that of the Crusades, every circumstance that tends to explain or to give any rational account of this extraordinary frenzy of the human mind is interesting. I have asserted in the text, that the minds of men were prepared gradually for the amazing effort which they made in consequence of the exhortations of Peter the Hermit, by several occurrences previous to his time. A more particular detail of this curious and obscure part of history may perhaps appear to some of my readers to be of importance. That the end of the world was expected about the close of the tenth, and beginning of the eleventh century and that this occasioned a general alaem, is evident, from the authors to whom I have referred in the text. This belief was so

universal, and so strong, that it mingled itself with civil transactions. Many charters, in the latter part of the tenth century, begin in this manner: "Appropringuante mundi termino," &c. " As the end of the world is now at hand, and by various calamities and judgments the signs of its approach are now manifest." Hist. de Langued. par D.D. de Vic. Vaisette, tom. ii. Preuves, p. 86. 89, 90. 117, 158, &c. One effect of this opinion was, that a great number of pilgrims resorted to Jerusalem, with a resolution to die there, or to wait the coming of the Lord; kings, earls, marquisses, bishops, and even a great number of women, besides persons of an inferior rank, flocked to the Holy Land. Glaber. Rodulph. Hist. chez Bouquet Recueil, tom. x. p. 50, 52. Another historian mentions a vast cavalcade of pilgrims who accompanied the count of Angouleme to Jerusalem in the year 1026. Chronic. Ademari. ibid. p. 162. Upon their return, these pilgrims filled Europe with lamentable accounts of the state of Christians in the Holy Land. Willerm. Tyr. Hist, ap. Gest. Dei per Franc. vol. ii. p. 636. Guibert. Abbat. Hist. ibid. vol. i. 476. Besides this, it was usual for many of the Christian inhabitants of Jerusalem, as well as of other cities in the East, to travel as mendicants through Europe; and, by describing the wretched conditions of the professor of the Christian faith under the dominion of infidels, to extort charity, and to excite zealous persons to make some attempt in order to deliver them from oppression. Baldrici Archiepiscopi Histor. ap. Gesta Dei, &c. vol. i. p. 86. In the year 986, Gerbert, archbishop of Ravenna, afterward Pope Silvester II. addressed a letter to all Christians in the name of the church of Jerusalem. It is eloquent and pathetic, and contains a formal exhortation to take arms against the Pagan oppressors, in order to rescue the holy city from their yoke. Gerberti Epistolæ ap. Bouquet Recueil, tom. x. p. 426. In consequence of this spirited call, some subjects of the republic of Pisa equipped a fleet. and invaded the territories of the Mahometans in Syria. Murat. Script. Rer. Italic. vol. iii. p. 400. The alarm was taken in the East, and an opinion prevailed, A.D. 1010, that all the forces of Christendom were to unite, in order to drive the Mahometans out of Palestine. Chron. Ademari ap. Bouquet, tom. x. p. 152. It is evident, from all these particulars, that the ideas which led the Crusaders to undertake their wild enterprise did not arise, according to the description of many authors, from a sudden fit of frantic

enthusiasm, but were gradually formed; so that the universal concourse to the standard of the cross, when erected

by Urban II., will appear less surprising.

If the various circumstances which I have enumerated in this note, as well as in the history, are sufficient to account for the ardour with which such vast numbers engaged in such a dangerous undertaking, the extensive privileges and immunities granted to the persons who assumed the cross, serve to account for the long continuance of this spirit in Europe. - 1. They were exempted from prosecutions on account of debt during the time of their being engaged in this holy service. Du Cange, voc. Crucis privilegium, vol. ii. p. 1194.—2. They were exempted from paying interest for the money which they had borrowed, in order to fit them for this sacred warfare. Ibid.—3. They were exempted either entirely, or at least during a certain time, from the payment of taxes. Ibid. Ordonances des Rois de France, tom. i. p. 33.—4. They might alienate their lands without the consent of the superior lord of whom they held. Ibid.-5. Their persons and effects were taken under the protection of St. Peter, and the anathemas of the church were denounced against all who should molest them, or carry on any quarrel or hostility against them, during their absence on account of the holy war. Du Cange, ibid. Guibertus Abbas ap. Bongars. i. p. 480. 482.—6. They enjoyed all the privileges of ecclesiastics, and were not bound to plead in any civil court, but were declared subject to the spiritual jurisdiction alone. Du Cange, ibid. Ordon. des Rois, tom. i. p. 34. 174.—7. They obtained a plenary remission of all their sins, and the gates of heaven were set open to them, without requiring any other proof of their penitence but their engaging in this expedition; and thus, by gratifying their favourite passion, the love of war, they secured to themselves immunities which were not usually obtained, but by paying large sums of money, or by undergoing painful penances. Guibert. Abbas, p. 480. When we behold the civil and ecclesiastical powers vying with each other, and straining their invention in order to devise expedients for encouraging and adding strength to the spirit of superstition, can we be surprised that it should become so general as to render it infamous, and a mark of cowardice, to decline engaging in the holy war? Willerm. Tyriensis ap. Bongars. vol. ii. p. 641. The histories of the Crusades, written by modern authors, who are apt to substitute the ideas and maxims of their own age in the place of those

which influenced the persons whose actions they attempt to relate, convey a very imperfect notion of the spirit at that time predominant in Europe. The original historians, who were animated themselves with the same passions which possessed their contemporaries, exhibit to us a more striking picture of the times and manners which they describe. The enthusiastic rapture with which they account for the effects of the pope's discourse in the council of Clermont; the exultation with which they mention the numbers who devoted themselves to this holy warfare; the confidence with which they express their reliance on the Divine protection; the ecstasy of joy with which they describe their taking possession of the holy city, will enable us to conceive, in some degree, the extravagance of that zeal which agitated the minds of men with such violence. and will suggest as many singular reflections to a philosopher, as any occurrence in the history of mankind. It is unnecessary to select the particular passages in the several historians, which confirm this observation. But lest those authors may be suspected of adorning their narrative with any exaggerated description, I shall appeal to one of the leaders who conducted the enterprise. There is extant a letter from Stephen, the earl of Chartres and Blois, to Adela his wife, in which he gives her an account of the progress of the crusaders. He describes the crusaders as the chosen army of Christ, as the servants and soldiers of God, as men who marched under the immediate protection of the Almighty, being conducted by his hand to victory and conquest. He speaks of the Turks as accursed, sacrilegious, and devoted by Heaven to destruction: and when he mentions the soldiers in the Christian army, who had died or were killed, he is confident that their souls were admitted directly into the joys of Paradise. Dacherii Spicelegium, vol. iv. p. 257.

The expense of conducting numerous bodies of men from Europe to Asia must have been excessive, and the difficulty of raising the necessary sums must have been proportionally great, during ages when the public revenues in every nation of Europe were extremely small. Some account is preserved of the expedients employed by Humbert II. dauphin of Vienne, in order to levy the money requisite towards equipping him for the crusade, A.D. 1346. These I shall mention, as they tend to shew the considerable influence which the crusaders had, both ou the state of property, and of civil government. 1. He ex-

posed to sale part of his domains; and as the price was destined for such a sacred service, he obtained the consent of the French king, of whom these lands were held. ratifying the alienation. Hist. de Dauphiné, tom, i. p. 332, 335,-2. He issued a proclamation, in which he promised to grant new privileges to the nobles, as well as new immunities to the cities and towns, in his territories, in consideration of certain sums which they were instantly to pay on that account. Ibid. tom. ii. p. 512. Many of the charters of community, which I shall mention in another Note, were obtained in this manner.-3. He exacted a contribution towards defraying the charges of the expedition from all his subjects, whether ecclesiastics or lavmen, who did not accompany him in person to the East. Ibid. tom. i. p. 335.—4. He appropriated a considerable part of his usual revenues for the support of the troops to be employed in this service. Ibid.t om. ii. p. 518. 5. He exacted considerable sums not only of the Jews settled in his dominions, but also of the Lombards and other bankers who had fixed their residence there. Ibid. tom. i. p. 338. tom. ii. 528. Notwithstanding the variety of these resources. the dauphin was involved in such expense by this expedition, that on his return he was obliged to make new demands on his subjects, and to pillage the Jews by fresh exactions. Ibid. tom. i. p. 344. 347. When the count de Foix engaged in the first crusade, he raised the money necessary for defraying the expenses of that expedition, by alienating part of his territories. Hist. de Langued, par D. D. de Vic et Vaisette, tom. ii. p. 287. In like manner. Baldwin, count of Hainaut, mortgaged or sold a considerable portion of his dominions to the bishop of Liege, A.D. Du Mont Corps Diplomatique, tom. i. p. 59. At a later period, Baldwin, count of Namur, sold part of his estate to a monastery, when he intended to assume the cross, A.D. 1239. Miræi Oper. i. 313.

## Note XIV., Sect. I. p. 34. [O]

The usual method of forming an opinion concerning the comparative state of manners in two different nations, is by attending to the facts which historians relate concerning each of them. Various passages might be selected from the Byzantine historians, describing the splendour and magnificence of the Greek empire. P. de Montfauçon has produced from the writings of St. Chrysostom a very full

account of the elegance and luxury of the Greeks in his age. That father in his sermons enters into such minute details concerning the manners and customs of his contemporaries, as appear strange in discourses from the pulpit. P. de Montfaucon has collected these descriptions, and ranged them under different heads. The court of the more early Greek emperors seems to have resembled those of Eastern monarchs, both in magnificence and in corruption of manners. The emperors in the eleventh century, though inferior in power, did not yield to them in ostentation and splendour. Memoirs de l'Acad. des Inscript. tom. xx. p. 197.—But we may decide concerning the comparative state of manners in the Eastern empire, and among the nations in the west of Europe, by another method, which, if not more certain, is at least more striking. As Constantinople was the place of rendezvous for all the armies of the crusaders, this brought together the people of the East and West as to one great interview. There are extant several contemporary authors, both among the Greeks and Latins, who were witnesses of this singular congress of people, formerly strangers, in a great measure, to each other. They describe, with simplicity and candour, the impression which that new spectacle made upon their own minds. This may be considered as the most lively and just picture of the real character and manners of each people. When the Greeks speak of the Franks, they describe them as barbarians, fierce, illiterate, impetuous, and savage. They assume a tone of superiority, as a more polished people, acquainted with the arts both of government and of elegance, of which the other was ignorant. It is thus Anna Comnena describes the manners of the Latins, Alexias, p. 224. 231. 237, ap. Byz. Script. vol. xi. She always views them with contempt, as a rude people, the very mention o. whose names was sufficient to contaminate the beauty and elegance of history, p. 229. Nicetas Choniatas inveighs against them with still more violence, and gives an account of their ferocity and devastations, in terms not unlike those which preceding historians had employed in describing the excursions of the Goths and Vandals. Nicet. Chon. ap. Byz. Script. vol. iii. p. 302, &c. But, on the other hand, the Latin historians were struck with astonishment at the magnificence, wealth, and elegance, which they discovered in the Eastern empire. "O what a vast city is Constantinople (exclaims Fulcherius Carnotensis, when he first beheld it), and how beautiful! How many

monasteries are there in it, and how many palaces, built with wonderful art! How many manufactures are there in the city, amazing to behold! It would be astonishing to relate how it abounds with all good things, with gold, silver, and stuffs of various kinds; for every hour ships arrive in its port laden with all things necessary for the use of man." Fulcher, ap. Bongars, vol. i. p. 386. Willermus, archbishop of Tyre, the most intelligent historian of the crusades, seems to be fond, on every occasion, of describing the elegance and splendour of the court of Constantinople, and adds, that what he and his countrymen observed there exceeded any idea which they could have formed of it. nostrarum enim rerum modum et dignitatem excedunt. Willerm. Tyr. ap. Bong. vol. ii. p. 657, 664. Benjamin the Jew, of Tudela, in Navarre, who began his travels A.D. 1173, appears to have been equally astonished at the magnificence of that city, and gives a description of its splendour in terms of high admiration. Benj. Tudel. chez les Voyages faits en 12, 13, &c. Siccles, par Bergeron, p. 10. &c. Guntherus, a French monk, who wrote a history of the conquest of Constantinople by the crusaders, in the thirteenth century, speaks of the magnificence of that city in the same tone of admiration: "Structuram autem ædificiorum in corpore civitatis, in coclesiis videlicit, et turribus, et in domibus magnatorum, vix ullus vel describere potest, vel credere describenti, nisi qui ea oculata fide cognoverit." Hist. Constantinop. ap. Canisii Lectiones Antiquas, fol. Antw. 1725. vol. iv. p. 14. Geoffrey de Villehardouin, a nobleman of high rank, and accustomed to all the magnificence then known in the West, describes, in similar terms, the astonishment and admiration of such of his fellow-soldiers as beheld Constantinople for the first time: "They could not have believed," says he, "that there was a city so beautiful and so rich in the whole world. When they viewed its high walls, its lofty towers, its rich palaces, its superb churches, all appeared so great, that they could have formed no conception of this sovereign city, unless they had seen it with their own eyes." Histoire de la Conquete de Constat. p. 49. From these undisguised representations of their own feelings, it is evident, that to the Greeks, the crusaders appeared to be a race of rude unpolished barbarians; whereas the latter, how much soever they might contemn the unwarlike character of the former, could not help regarding them as far superior, to themselves in elegance and arts. That the state of government and manners was much more improved in Italy than in the other countries of Europe, is evident, not only from the facts recorded in history, but it appears that the more intelligent leaders of the crusaders were struck with the difference. Jacobus de Vitriaco, a French historian of the holy war, makes an elaborate panegyric on the character and manners of the Italians. He views them as a more polished people, and particularly celebrates them for their love of libert; and civil wisdom: "In consiliis circumspecti, in re sua publica procuranda diligentes et studiosi; sibi in posterum providentes; aliis subjici renuentes; ante omnia libertatem sibi defendentes; sub uno quem eligunt capitaneo, communitati sua jura et instituta dictantes et similiter observantes." Histor. Hierosol. ap. Gesta Die per Francos, vol. ii. p. 1085.

# Note XV. Sect. I. 37. [P]

THE different steps taken by the cities of Italy, in order to extend their power and dominions, are remarkable. As soon as their liberties were established, and they began to feel their own importance, they endeayoured to render themselves masters of their territories round their walls. Under the Romans, when cities enjoyed municipal privileges and jurisdiction, the circumjacent lands belonged to each town, and were the property of the community. But as it was not the genius of the feudal policy to encourage cities, or to shew any regard for their possessions and immunities, these lands had been seized and shared among the conquerors. The barons, to whom they were granted, crected their castles almost at the gates of the city, and exercised their jurisdiction there. Under pretence of recovering their ancient property, many of the cities in Italy attacked these troublesome neighbours, and, dispossessing them, annexed their territories to the communities, and made thereby a considerable addition to their power. Several instances of this occur in the eleventh and beginning of the twelfth centuries. Murat. Antiq. Ital. vol. iv. p. 159, &c. Their ambition increasing together with their power, the cities afterward attacked several barons situated at a greater distance from their walls, and obliged them to engage that they would become members of their community; that they would take the oath of fidelity to their magistrates; that they would subject their lands to all burdens and taxes imposed by common consent; that they would

defend the community against all its enemies; and that they would reside within the city during a certain specified time in each year. Murat. ibid. 163. The subjection of the nobility to the municipal government established in cities, became almost universal, and was often extremely grievous to persons accustomed to consider themselves as independent. Otto Frigensis thus described the state of Italy under Frederick I. " The cities so much affect liberty, and are so solicitous to avoid the insolence of power, that almost all of them have thrown off every other authority, and are governed by their own magistrates. Insomuch that all that country is now filled with free cities, most of which have compelled their bishops to reside within their walls, and there is scarcely any nobleman, how great soever his power may be, who is not subject to the laws and government of some city." De Gestis Frider, I. Imp. lib. ii. c. 13. p. 453. In another place he observes of the marquis of Montserrat, that he was almost the only Italian baron who had preserved his independence, and had not become subject to the laws of any city. See also Muratori Antichita Estensi, vol. i. p. 411, 412. That state, into which some of the nobles were compelled to enter, others embraced from choice. They observed the high degree of security, as well as of credit and estimation, which the growing wealth and dominion of the great communities procured to all the members of them. They were desirous to partake of these, and to put themselves under such powerful protection. With this view they voluntarily became citizens of the towns to which their lands were most contiguous; and, abandoning their ancient castles, took up their residence in the cities at least during part of the year. Several deeds are still extant, by which some of the most illustrious families in Italy are associated as citizens of different cities. Murat. ib. p. 165, &c. A charter, by which Atto de Macerata is admitted as a citizen of Osimo, A. D. 1198, in the Marcha di Ancona, is still extant. In this he stipulates, that he will acknowledge himself to be a burgess of that community; that he will to the utmost of his power promote its honour and welfare; that he will obey its magistrates; that he will enter into no league with its enemies; that he will reside in the town during two months in every year, or for a longer time, if required by the magistrates. The community, on the other hand, take him, his family, and friends, under their protection, and engage to defend him against every enemy. Fr. Ant. Zacharias Anecdota

Medii Ævi. Aug. Taur. 1755, fol. p. 66. This privilege was deemed so important, that not only laymen, but ccclesiastics of the highest rank, condescended to be adopted as members of the great communities, in hopes of enjoying the safety and dignity which that condition conferred. Murat. ib. 179. Before the institution of communities, persons of noble birth had no other residence but their castles. They kept their petty courts their: and the cities were deserted, having hardly any inhabitants but slaves or persons of low condition. But in consequence of the practice which I have mentioned, cities not only became more populous, but were filled with inhabitants of better rank, and a custom which still subsists in Italy was then introduced, that all families of distinction reside more constantly in the great towns, than is usual in other parts of Europe. As cities acquired new consideration and dignity by the accession of such citizens, they became more solicitous to preserve their liberty and independence. The emperors, as sovereigns, had anciently a palace in almost every great city of Italy; when they visited that country, they were accustomed to reside in these palaces, and the troops which accompanied them were quartered in the houses of the citizens. the citizens deemed both ignominious and dangerous. They could not help considering it as receiving a master and an enemy within their walls. They laboured therefore to get free of this subjection. Some cities prevailed on the emperors to engage that they would never enter their gates, but take up their residence without the walls. Chart. Hen. IV. Murat. ib. p. 24. Others obtained the Imperial licence to pull down the palace situated within their liberties, on condition that they built another in the suburbs for the occasional reception of the emperor. Chart. Hen. IV. Murat. ibid. p. 25. These various encroachments of the Italian cities alarmed the emperors, and put them on schemes for re-establishing the Imperial jurisdiction over them on its ancient footing. Frederick Barbarossa engaged in this enterprise with great aidour. The free cities of Italy joined together in a general league, and stood on their defence; and after a long contest, carried on with alternate success, a solemn treaty of peace was concluded at Constance, A. D. 1183, by which all the privileges and immunities granted by former emperors to the principal cities in Italy were confirmed and ratified. Murat. Dissert. XLVIII. This treaty of Constance was considered. as such an important article in the jurisprudence of the middle ages, that it is usually published together with the

Libri Fendorum at the end of the Corpus Juris Civilis. The treaty secured privileges of great importance to the confederate cities, and though it reserved a considerable degree of authority and jurisdiction to the empire, yet the cities persevered with such vigour in their efforts in order to extend their immunities, and the conjunctures in which they made them were so favourable, that, before the conclusion of the thirteenth century, most of the great cities in Italy had shaken off all marks of subjection to the empire, and were become independent sovereign republics. It is not requisite that I should trace the various staps by which they advanced to this high degree of power, so fatal to the empire, and so beneficial to the cause of liberty in Italy. Muratori, with his usual industry, has collected many original papers which illustrate this curious and little known part of history. Murat. Antiq. Ital. Dissert. L. See also Jo. Bapt. Villanovæ Hist. Laudis Pompeii sivi Lodi, in Græv. Thes. Antiquit. Ital. vol. iii. p. 888.

### Note XVI. Sect. I. p. 38. [Q]

Long before the institution of communities in France. charters of immunity or franchise were granted to some towns and villages by the lords on whom they depended. But these are very different from such as became common in the twelfth or thirteenth centuries. They did not erect these towns into corporations; they did not establish a municipal government; they did not grant them the privilege of bearing arms. They contained nothing more than a manumission of the inhabitants from the yoke of servitude; an exemption of certain services which were oppressive and ignominious: and the establishment of a fixed tax or rent which the citizens were to pay to their lord in place of impositions which he could formerly lay upon them at pleasure. Two charters of this kind to two villages in the county of Rousillon, one in A. D. 974, the other in A. D. 1025, are still extant. Petr. de Marca, Marca, sive Limes Hispanicus, App. p. 909, 1038. Such concessions, it is probable, were not unknown in other parts of Europe, and may be considered as a step towards the more extensive privileges conferred by Louis le Gros, on the towns within The communities in France never aspired to his domains. the same independence with those in Italy. They acquired new privileges and immunities, but the right of sovereignty remained entire to the king or baron within whose territories the respective cities were situated, and from whom they

received the charter of their freedom. A great number of these charters, granted both by the kings of France, and by their great vassals, are published by M. D'Achery in his Spicelegium, and many are found in the collection of the Ordonnances des Rois de France. These convey a very striking representation of the wretched condition of cities previous to the institution of communities, when they were subject to the judges appointed by the superior lords of whom they held, and who had scarcely any other law but their will. Each concession in these charters must be considered as a grant of some new privileges which the people did not formerly enjoy, and each regulation as a method of redressing some grievance under which the inhabitants of cities formerly laboured. The charters of communities contain likewise the first expedients employed for the introduction of equal laws and regular government. On both these accounts they merit particular attention, and therefore, instead of referring my readers to the many bulky volumes in which they are scattered, I shall give them a view of some of the most important articles in these charters, ranged under two general heads. I. Such as respect personal safety. II. Such as respect the security of proberty.

I. During that state of turbulence and disorder which the corruption of the feudal government introduced into Europe, personal safety was the first and great object of every individual; and as the great military barons alone were able to give sufficient protection to their vassals, this was one great source of their power and authority. But, by the institution of communities, effectual provision was made for the safety of individuals, independent of the nobles. For, 1. The fundamental article in every charter was, that all the members of the community bound themselves by oath to assist, defend, and stand by each other against all aggressors, and that they should not suffer any person to injure, distress, or molest any of their fellow-citizens. D'Acher. Spicel. x. 642. xi. 341, &c -2. Whoever resided in any town, which was made free, was obliged, under a severe penalty, to accede to the community, and to take part in the mutual defence of its members. D'Acher, Spic. xi. 344.—3. The communities had the privilege of carrying arms: of making war on their private enemies; and of executing by military force any sentence which their magistrates pronounced. D'Ach. Spicel. x. 643, 644. xi. 343. -4. The practice of making satisfaction by a pecuniary

compensation for murder, assault, or other acts of violence. most inconsistent with the order of society, and the safety of individuals, was abolished; and such as committed these crimes were punished capitally, or with rigour adequate to their guilt. D'Ach, xi. 362. Miræi Opera Diplomatica, i. 292.-5. No member of a community was bound to justify or defend himself by battle or combat: but, if he was charged with any crime, he could be convicted only by the evidence of witnesses, and the regular course of legal proceedings. Miræus, ibid. D'Ach. xi. 375. 349. Ordon, tom. iii. 265.—6. If any man suspected himself to be in danger from the malice or enmity of another. upon his making oath to that effect before a magistrate, the person suspected was bound under a severe penalty to give security for his peaceable behaviour. D'Ach. xi. 346. This is the same species of security which is known still in Scotland under the name of Lawburrows. In France, it was first introduced among the inhabitants of communities, and having been found to contribute considerably towards personal safety, it was extended to all the other members of the society. Establissemens de St. Louis, liv. i. cap. 28. ap. Du Cange Vie de St. Louis, p. 15.

II. The provisions in the charters of communities concerning the security of property, are not less considerable than those respecting personal safety. By the ancient law of France, no person could be arrested or confined in prison on account of any private debt. Ordon. des Rois de France. tom, i. p. 72. 80. If any person was arrested upon any pretext but his having been guilty of a capital crime, it was lawful to rescue him out of the hands of the officers who had seized him. Ordon. iii. p. 17. Freedom from arrest, on account of debt, seems likewise to have been enjoyed in other countries. Gudenus Sylloge Diplom. 473. In society. while it remained in its rudest and most simple form, debt seems to have been considered as an obligation merely personal. Men had made some progress towards refinement, before creditors acquired a right of seizing the property of their debtors, in order to recover payment. The expedients for this purpose were all introduced originally in communities, and we can trace the gradual progress of them. The simplest and most obvious species of security was, that the person who sold any commodity should receive a pledge from him who bought it, which he restored upon receiving payment. Of this custom there are vestiges in several charters of community. D'Ach. ix. 185. xi. 377.-2. When

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no pledge was given, and the debtor became refractory or insolvent, the creditor was allowed to seize his effects with a strong hand, and by his private authority; the citizens of Paris are warranted by the royal mandate, " ut ubicumque. et quocumque modo poterunt, tantum capiant, unde pecuniam sibi debitam integrè et plenariè habeant, et inde sibi invicem adjutores existant." Ordon. &c. tom. i. p. 6. This rude practice, suitable only to the violence of that which has been called a state of nature, was tolerated longer than one can conceive it to be possible in any society where laws and order were at all known. The ordonance authorizing it was issued A. D. 1134; and that which corrects the law, and prohibits creditors from seizing the effects of their debtors, unless by a warrant from a magistrate, and under his inspection, was not published until the year 1351. Ordon. tom. ii. p. 438. It is probable, however, that men were taught, by observing the disorders which the former mode of proceeding occasioned, to correct it in practice long before a remedy was provided by a law to that effect. Every discerning reader will apply this observation to many other customs and practices which I have mentioned. New customs are not always to be ascribed to the laws which authorize them. Those statutes only give a legal sanction to such things as the experience of mankind has previously found to be proper and beneficial.—3. As soon as the interposition of the magistrate became requisite, regular provision was made for attaching or distraining the moveable effects of a debtor: and if his moveables were not sufficient to discharge the debt, his immoveable property, or estate in land, was liable to the same distress, and was sold for the benefit of his creditor. D'Ach. ix. p. 184, 185; xi. p. 348. 380. As this regulation afforded the most complete security to the creditor, it was considered as so severe, that humanity pointed out several limitations in the execution of it. Creditors were prohibited from seizing the wearing-apparel of their debtors, their beds, the door of their house, their instruments of husbandry, &c. D'Ach. ix. 184; xi. 377. Upon the same principles, when the power of distraining effects became more general, the horse and arms of a gentleman could not be seized. D'Ach. ix. 185. As hunting was the favourite amusement of martial nobles, the emperor Ludovicus Pius prohibited the seizing of a hawk on account of any composition or debt. Capitul. lib. iv. § 21. But if the debtor had no other moveables, even these privileged articles might be seized.-4. In order to render the security

of property complete within a community, every person who was admitted a member of it, was obliged to buy or build a house, or to purchase lands within its precincts, or at least to bring into the town a considerable portion of his moveables, per quæ justiciari possit, si quid forte in eum querelæ evenerit. D'Ach. xi. 326. Ordon. i. 367. Libertates S. Georgii de Esperanchia. Hist. de Dauphinè, tom. i. p. 26.—5. That security might be as perfect as possible. in some towns the members of the community seem to have been bound for each other. D'Ach. x. 644.—6. All questions with respect to property were tried wishin the community, by magistrates and judges whom the citizens clected or appointed. Their decisions were more equal and fixed than the sentences which depended on the capricious and arbitrary will of a baron, who thought himself superior to all laws. D'Ach. x. 644. 646, xi. 344, et passim. Ordon, iii, 204.—7. No member of a community could be burdened by any arbitrary tax: for the superior lord, who granted the charter of community, accepted of a fixed census or duty in lieu of all demands. Ordon, tom, iii. 204. Libertates de Calma. Hist. de Dauphine, tom. i. p. 19. Libertates S. Georgii de Esperanchia, ibid. p. 26. Nor could the members of a community be distressed by an unequal imposition of the sum to be levied on the commu-Regulations are inserted in the charters of some nitv. communities, concerning the method of determining the quota of any tax to be levied on each inhabitant. D'Ach. xi. 350, 365. St. Louis published an ordonance concerning this matter, which extended to all communities. Ordon. tom. i. 186. These regulations are extremely favourable to liberty, as they vest the power of proportioning the taxes in a certain number of citizens chosen out of each parish, who were bound, by solemn oath, to decide according to justice. That the more perfect security of property was one great object of those who instituted communities, we learn, not only from the nature of the thing, but from the express words of several charters, of which I shall only mention that granted by Alienor, queen of England and duchess of Guienne, to the community of Poitiers, "ut sua propria melius defendere possint, et magis integrè custodire." Du Cange, voc. Communia, vol. ii. p. 863.—Such are some of the capital regulations established in communities during the twelfth and thirteenth centuries. These may be considered as the first expedients for the re-establishment of law and order, and contributed greatly to introduce re-

gular government among all the members of society. As soon as communities were instituted, high sentiments of liberty began to manifest themselves. When Humbert. lord of Beaujeu, upon granting a charter of community to the town of Belleville, exacted of the inhabitants an oath of fidelity to himself and successors, they stipulated, on their part, that he should swear to maintain their franchises and liberties; and, for their greater security, they obliged him to bring twenty gentlemen to take the same oath, and to be bound together with him. D'Ach, ix. 183. In the same manner the lord of Moriens in Dauphine produced a certain number of persons as his sureties for the observation of the articles contained in the charter of community to that town. These were bound to surrender themselves prisoners to the inhabitants of Moriens, if their liege lord should violate any of their franchises, and they promised to remain in custody until he should grant the members of the community redress. Hist. de Dauphine, tom. i. p. 17. If the mayor or chief magistrate of a own did any injury to a citizen, he was obliged to give security for his appearance in judgment, in the same manner as a private person: and if cast, was liable to the same penalty. D'Ach. ix. 183. These are ideas of equality uncommon in the feudal times. Communities were so favourable to freedom, that they were distinguished by the name of Libertates. Du Cange, vol. ii. p. 863. They were at first extremely odious to the nobles, who foresaw what a check they must prove to their power and domination. Guibert, abbot of Nogent, calls them execrable inventions, by which, contrary to law and justice, slaves withdrew themselves from that obedience which they owed to their masters. Du Cange, ibid. 862. The zeal with which some of the nobles and powerful ecclesiastics opposed the establishment of communities, and endcayoured to circumscribe their privileges, was extraordinary. A striking instance of this occurs in the contests between the archbishop of Rheims and the inhabitants of that community. It was the chief business of every archbishop, during a considerable time, to abridge the rights and jurisdiction of the community; and the great object of the citizens, especially when the see was vacant, to maintain, to recover, and to extend their own jurisdictions. Histoire Civile et Politique de la Ville de Reims, par M. Anguetil, tom. i. p. 287 &c.

The observations which I have made concerning the low state of cities, and the condition of their inhabitants, are

confirmed by innumerable passages in the historians and laws of the middle ages. It is not improbable, however. that some cities of the first order were in a better state, and enjoyed a superior degree of liberty. Under the Roman government, the municipal government established in cities was extremely favourable to liberty. The jurisdiction of the senate in each corporation, and the privileges of the citizens, were both extensive. There is reason to believe that some of the greater cities, which escaped the destructive rage of the barbarous nations, still retained their ancient form of government, at least in a great measure. They were governed by a council of citizens, and by magistrates whom they themselves elected. Very strong presumptions in favour of this opinion are produced by M. l'Abbé de Bos. Hist. Crit. de la Mon. Franc. tom. i. p. 18, &c. tom. ii p. 524., edit. 1742. It appears from some of the charters of community to cities, granted in the twelfth and thirteenth centuries, that these only confirm the privileges possessed by the inkabitants previous to the establishment of the community. D'Acher. Spiceleg. vol. xi. p. 345. Other cities claimed their privileges as having possessed them without interruption from the times of the Romans. Hist. Crit. de la Mon. Franc. tom. ii. p. 333. But the number of cities which enjoyed such immunities was so small, as hardly, in any degree, to diminish the force of my conclusions in the text.

## Note XVII. Sect. I. p. 38. [R]

HAVING given a full account of the establishment, as well as effects of communities in Italy and France, it will be necessary to inquire, with some attention, into the progress of cities and of municipal government in Germany. The ancient Germans had no cities. Even in their hamlets or villages, they did not build their houses contiguous to each other. Tacit. de Mor. Germ. cap. 16. They considered it as a badge of servitude, to be obliged to dwell in a city surrounded with walls. When one of their tribes had shaken off the Roman yoke, their countrymen required of them, as an evidence of their having recovered liberty. demolish the walls of a town which the Romans had built in their country. Even the fiercest animals, said they, lose their spirit and courage when they are confined. Tacit. Histor. lib. iv. c. 64. The Romans built several cities of note on the banks of the Rhine. But in all-the wast countries from that river to the coasts of the Baltic. there was hardly one city previous to the ninth century of the Christian era. Conringius Exercitatio de Urbibus Germaniæ, Oper. vol. i. § 25, 27, 31, &c. Hieneccius differs from Conringius with respect to this. But even. after allowing to his arguments and authorities their utmost force, they prove only, that there were a few places in those extensive regions on which some historians have bestowed the name of towns. Elem. Jur. German, lib. i. § 102. Under Charlemagne, and the emperors of his family, as the political state of Germany began to improve. several citics were founded, and men became accustomed to associate and live together in one place. Charlemagne founded two archbishoprics and nine bishoprics in the most considerable towns in Germany. Aub. Miræi Opera Diplomatica, vol. i. p. 16. His successors increased the number of these; and as bishops fixed their residence in the chief town of their diocess, and performed religious functions there, that induced many people to settle in them. Conring. ibid. § 48. But Henry, surnamed the Fowler, who began his reign A.D. 920, must be considered as the great founder of cities in Germany. The empire was at that time infested by the incursions of the Hungarians and other barbarous people. In order to oppose them, Henry encouraged his subjects to settle in cities, which he surrounded with walls strengthened by towers. He enjoined or persuaded a certain proportion of the nobility to fix their residence in the towns, and thus rendered the condition of citizens more honourable than it had been formerly. Wittikindus Annal. lib. i. ap. Conring. § 82. From this period, the number of cities continued to increase, and they became more populous and more wealthy. But cities in Germany were still destitute of municipal liberty or jurisdiction. Such of them as were situated in the Imperial demesnes, were subject to the emperors. Their Comites, Missi, and other judges, presided in them, and dispensed justice. Towns situated on the estate of a baron, were part of his fief, and he or his officers exercised a similar jurisdiction in them. Confing. ibid. § 73, 74. Heinec. Elem. Jur. Germ. lib. i. § 104. The Germans borrowed the institution of communities from the Italians. Knipschilains Tractatus Politico-Histor. Jurid. de Civitatum Imperialium Juribus, vol. i. lib. i. cap. 5. No. 23. Frederick Barbarossa was the first emperor who, from the same political consideration that influenced Louis le Gros, multiplied communities, in order to abridge the power of the nobles. Pfeffel Abregè de l'Histoire et du Droit Publique d'Allemagne, 4to, p. 297. From the reign of Henry the Fowler. to the time when the German cities acquired full possession of their immunities, various circumstances contributed to their increase. The establishment of bishoprics (already mentioned), and the building of cathedrals, naturally induced many people to settle near the chief place of worship. It became the custom to hold councils and courts of judicature of every kind, ecclesiastical as well as civil, in cities. In the eleventh century, many slaves were enfranchised, the greater part of whom settled in cities. Several mines were discovered and wrought in different provinces, which drew together such a concourse of people. as gave rise to several cities, and increased the number of inhabitants in others. Conring. § 105. The cities began. in the thirteenth century, to form leagues for their mutual defence, and for repressing the disorders occasioned by the private wars among the barons, as well as by their exac-This rendered the condition of the inhabitants of cities more secure than that of any other order of men. and allured many to become members of their communi-Conring. § 94. There were inhabitants of three different ranks in the towns of Germany: the nobles, or familiæ; the citizens, or liberi; and the artisans, who were slaves, or homines proprii. Knipschild. lib. ii. cap. 29, No. 13. Henry V., who began his reign A.D. 1106, enfranchised the slaves who were artisans or inhabitants in several towns, and gave them the rank of citizens or liberi. Pfeffel, p. 254. Knipschild, lib. ii. c. 29. No. 113, 119. Though the cities in Germany did not acquire liberty so early as those in France, they extended their privileges much farther. All the Imperial and free cities, the number of which is considerable, acquired the full right of being immediate; by which term, in the German jurisprudence, we are to understand, that they are subject to the empire alone, and possess within their own precincts all the rights of complete and independent sovereignty. The various privileges of the Imperial cities, the great guardians of the Germanic liberties, are enumerated by Knipschild, lib. ii. The most important articles are generally known, and it would be improper to enter into any disquisition concerning minute particulars.

#### Note XVIII. Sect. I. p. 38. [S]

THE Spanish historians are almost entirely silent concerning the origin and progress of communities in that kingdom; so that I cannot fix, with any degree of certainty, the time and manner of their first introduction there. It appears, however, from Mariana, vol. ii. p. 221. fol. Hagæ, 1726, that in the year 1350, eighteen cities had obtained a seat in the cortes of Castile. From the account, which will be given of their constitution and pretensions. Sect. III, of this volume, it appears that their privileges and form of government were the same with those of the other feudal corporations; and this, as well as the perfect similarity of political institutions and transactions in all the feudal kingdoms, may lead us to conclude, that communities were introduced there in the same manner, and probably about the same time, as in the other nations of Europe. In Aragon, as I shall have occasion to observe in a subsequent Note, cities seem early to have acquired extensive immunities, together with a share in the legislature. In the year 1118, the citizens of Saragossa had not only attained political liberty, but they were declared to be of equal rank with the nobles of the second class; and many other immunities, unknown to persons in their rank of life in other parts of Europe, were conferred upon them. Zurita Annales de Aragon, tom. i. p. 44. In England, the establishment of communities or corporations was posterior to the Conquest. The practice was borrowed from France, and the privileges granted by the crown were perfectly similar to those which I have enumerated. But as this part of history is well known to most of my readers, I shall, without entering into any critical or minute discussion, refer them to authors who have fully illustrated this interesting point in the English history. Brady's Treatise of Boroughs. Madox Firma Burgi, cap. i. sect. ix. Hume's History of England, vol. i. append. i. and ii. It is not improbable that some of the towns in England were formed into corporations under the Saxon, kings, and that the charters granted by the kings of the Norman race were not charters of enfranchisement from a state of slavery, but a confirmation of privileges which they already enjoyed. See Lord Lyttleton's History of Henry II., vol. ii. p. 217. The English cities, however, were very inconsiderable in the twelfth centary. A clear proof of this occurs in the history to which I last referred. Fitzstephen, a contemporary author,

gives a description of the city of London, in the reign of Henry II.; and the terms in which he speaks of its trade. its wealth, and the splendour of its inhabitants, would suggest no inadequate idea of its state at present, when it is the greatest and most opulent city of Europe. But all ideas of grandour and magnificence are mercly comparative: and every description of them in general terms is very apt to deceive. It appears from Peter of Blois, archdeacon of London, who flourished in the same reign, and who had good opportunity of being well informed, that this city, of which Fitzstephen gives such a pompous account, contained no more than forty thousand inhabitants. Ibid. 315, 316. The other cities were small in proportion, and were not in a condition to extort any extensive privileges. That the constitution of the boroughs in Scotland, in many circumstances, resembled that of the towns in France and England, is manifest from the Leges Burgorum, annexed to the Regiam Majestatem.

## Note XIX. Sect. I. p. 43. [T]

Soon after the introduction of the third estate into the national council, the spirit of liberty which that excited in France began to produce conspicuous effects. In several provinces of France, the nobility and communities formed associations, whereby they bound themselves to defend their rights and privileges against the formidable and arbitrary proceedings of the king. The count de Boulainvilliers has preserved a copy of one of these associations, dated in the year 1314, twelve years after the admission of the deputies from towns into the states-general. Histoire de l'ancien Gouvernement de la France, tom. ii. p. 94. The vigour with which the people asserted, and prepared to maintain their rights, obliged their sovereigns to respect them. Six years after this association, Philip the Long issued a writ of summons to the community of Narbonne. in the following terms: "Philip, by the grace, &c. to our well-beloved, &c. As we desire, with all our heart, and above all other things, to govern our kingdom and people in peace and tranquillity, by the help of God; and to Aform our said kingdom in so far as it stands in need thereof, for the public good, and for the benefit of our subjects, who, in times past, have been aggrieved and oppressed in divers manners by the malice of sundry persons, as we have learned by common report, as well as by the

information of good men worthy of credit, and we, having determined in our council which we have called to meet in our good city, &c., to give redress to the utmost of our power, by all ways and means possible, according to reason and justice, and willing that this should be done with solemnity and deliberation, by the advice of the prelates. barons, and good towns of our realm, and particularly of vou. and that it should be transacted agreeably to the will of God, and for the good of our people, therefore we command," &c. Mably, Observat. ii. App. p. 386. I shall allow these to be only the formal words of a public and legal style: but the ideas are singular, and much more liberal and enlarged than one could expect in that age. popular monarch of Great Britain could hardly address himself to parliament in terms more favourable to public liberty. There occurs in the history of France a striking instance of the progress which the principles of liberty had made in that kingdom, and of the influence which the deputies of towns had acquired in the states-general. During the calamities in which the war with England, and the captivity of king John, had involved France, the statesgeneral made a bold effort to extend their own privileges and jurisdiction. The regulations established by the states. held A.D. 1355, concerning the mode of levving taxes, the administration of which they vested not in the crown, but in commissioners appointed by the states; concerning the coining of money; concerning the redress of the grievance of purveyance; concerning the regular administration of justice: are much more suitable to the genius of a republican government than that of a feudal monarchy. curious statute is published, Ordon. tom. iii. p. 19. Such as have not an opportunity to consult that large collection. will find an abridgment of it in Hist, de France par Villaret, tom. ix. p. 130. or in Histoire de Boulainv. tom. ii. 213. The French historians represent the bishop of Laon. and Marcel Provost of the merchants of Paris, who had the chief direction of this assembly, as ceditious tribunes, violent, interested, ambitious, and aiming at innovations subversive of the constitution and government of their country. That may have been the case; but these men possessed the confidence of the people; and the measures which they proposed as the most popular and acceptable, as well as most likely to increase their own influence, plainly prove the spirit of liberty had spread wonderfully, and that the ideas which then prevailed in France concerning government were extremely liberal. The states-general held at Paris A. D. 1355, consisted of about eight hundred members, and above one half of these were deputies from towns. M. Secousse Pref. a Ordon. tom. iii. p. 48. It appears that in all the different assemblies of the states. held during the reign of John, the representatives of towns had great influence, and in every respect the third state was considered as co-ordinate, and equal to the other two. Ib. passim. These s irited efforts were made in France long before the House of Commons in England acquired any considerable influence in the legislature. As the feudal system was carried to its utmost height in France sooner than in England, so it began to decline sooner in the former than in the latter kingdom. In England, almost all attempts to establish or to extend the liberty of the people have been successful; in France they have proved unfortunate. What were the accidental events, or political causes. which occasioned this difference, it is not my present business to inquire.

### Note XX. Sect. I. p. 44. [U]

In a former Note, No. VIII., I have inquired into the condition of that part of the people which was employed in agriculture; and have represented the various hardships and calamities of their situation. When charters of liberty or manumission were granted to such persons, they contained four concessions corresponding to the four capital grievances to which men in a state of servitude are subject. -1. The right of disposing of their persons by sale or grant was relinquished.—2. Power was given to them of conveving their property and effects by will or any other legal deed. Or if they happened to die intestate, it was provided that their property should go to their lawful heirs in the same manner as the property of other persons.-3. The services and taxes which they owed to their superior or liege lord, which were formerly arbitrary and imposed at pleasure, are precisely ascertained.-4. They are allowed the privilege of marrying according to their own inclination: formerly they could contract no marriage without their ford's permission, and with no person but one of his slaves. All these particulars are found united in the charter granted Habitatoribus Montis-Britanis, A.D. 1376. Hist. de Dauphine, tom. i. p. 81. Many circumstances concurred with those which I have mentioned in the text in procuring

them deliverance from that wretched state. The gentle spirit of the Christian religion: the doctrines which it teaches, concerning the original equality of mankind; its tenets with respect to the divine government, and the impartial eve with which the Almighty regards men of every condition, and admits them to a participation of his benefits, are all inconsistent with servitude. But in this, as in many other instances, considerations of interest, and the maxims of false policy, led men to a conduct inconsistent with their principles. They were so sensible, however, of this inconsistency, that to set their fellow-christians at liberty from servitude, was deemed an act of piety highly meritorious and acceptable to Heaven. The humane spirit of the Christian religion struggled long with the maxims and manners of the world, and contributed more than any other circumstance to introduce the practice of manumission. When pope Gregory the Great, who flourished towards the end of the sixth century, granted liberty to some of his slaves, he gives this reason for it, " Cum Redemptor noster, totius conditor naturæ, ad hoc propitiatus humanam carnem voluerit assumere, ut divinitatis suæ gratia, dirempto (quo tenebamur captivi) vinculo, pristinæ nos restitueret libertati; salubriter agitur, si homines, quos ab initio liberos natura protulit, et jus gentium jugo substituit servitutis, in ea, qua nati fuerant, manumittentis beneficio, libertati reddantur." Gregor. Magn. ap. Potgiess. lib. iv. c. i. § 3. Several laws of charters founded on reasons similar to this, are produced by the same author. Accordingly, a great part of the charters of manumission, previous to the reign of Louis X. are granted pro amore Dei, pro remedio animæ, et pro mercede animæ. Murat. Antiq. Ital. vol. i. p. 849, 850. Du Cange, voc. Manumissio. The formality of manumission was executed in a church, as a religious solemnity. The person to be set free was led round the great altar with a torch in his hand, he took hold of the horns of the altar, and there the solemn words conferring liberty were pronounced. Du Cange, ibid. vol. iv. p. 467. I shall transcribe a part of a charter of manumission granted A.D. 1056? both as it contains a full account of the ceremonies used in this form of manumission, and as a specimen of the imperfect knowledge of the Latin tongue in that barbarous age. It is granted by Willa the widow of Hugo the duke and marquis, in favour of Clariza one of her slaves. "Et ideo nos Domine Wille inclite correlisse-libera et absolvo te Cleriza filia Uberto-pre

timore omnipotensis Dei, et remedio luminarie anime bonc memorie quandam supra scripto Domini Ugo gloriossissimo, ut quando illum Dominus de hac vita migrare, imsserit, pars iniqua non abeat potestatem ullam, sed anguelas Domini nostri Jesu Christi colocare dignitur illum inter sanctos dilectos suos; et beatus Petrus princips apostoloruna, qui habed potestatem omnium animarum ligandi et absolvendi, ut ipsi absolvat animæ ejus de peccatis sui, aperiad illun janua paradisi; pro cadem vero rationi, in mano mite te Benzo presbiter, ut vadat tecum in ecclesia sancti Bartholomæi apostoli: traad de tribus vicibus circa altare ipsius ecclesiæ cum cæreo apprehensum in manibus tuis et manibus suis; deinde exite ambulate in via quadrubio, ubi quatuor vie se dividuntur. Statimq: pro remedio luminarie anime bone memorie quondam supra scripto Domini Ugo et ipsi presbiter Benzo fecit omnia, et dixit, Ecce quatuor vie, ite et ambulate in quacung; partem tibi placuerit, tam sic supra scripta Cleriza, qua nosque tui heredes, qui ab ac hora in antea nati, vel procreati fuerit utriusq; sexus, &c." Murat. ibid. p. 853. Many other charters might have been selected, which in point of grammar or style, are in no wise superior to this. Manumission was frequently granted on death-bed or by latter-will. As the minds of men are at that time awakened to sentiments of humanity and piety, these deeds proceeded from religious motives. and were granted pro redemptione anima, in order to obtain acceptance with God. Du Cange, ubi supra, p. 470, et voc. Servus, vol. vi. p. 451. Another method of obtaining liberty was by entering into holy orders, or taking the vow in a monastery. This was permitted for some time; but so many slaves escaped, by this means, out of the hands of their masters, that the practice was afterward restrained, and at last prohibited by the laws of almost all the nations of Europe. Murat. ibid. p. 842. Conformably to the same principles, princes, on the birth of a son, or upon any other agreeable event, appointed a certain number of slaves to be enfranchised, as a testimony of their gratitude to God for that benefit. Marculfii Form. lib. i. cap. 39. There are several forms of manumission published by Marculfus, and all of them are founded on religious considerations, in to procure the favour of God, or to obtain the forgiveness of their sins. Lib. ii. c. 23. 33, 34. edit. Baluz. The same observation holds with respect to the other collections of Formulæ annexed to Marculfus. As sentiments of religion induced some to grant liberty to their fellow-circis-

tians who groaned under the yoke of servitude; so mistaken ideas concerning devotion led others to relinquish When a person conceived an extraordinary their liberty. respect for the saint who was the patron of any church or monastery in which he was accustomed to attend religious worship, it was not unusual among men possessed with an excess of superstitious reverence, to give up themselves and their posterity to be the slaves of the saint. Mabillon de Re Diplomat. lib. vi. 632. The oblati or voluntary slaves of churches or monasteries were very numerous, and may be divided into three different classes. The first were such as put themselves and effects under the protection of a particular church or monastery, binding themselves to defend its privileges and property against every aggressor. These were prompted to do so not merely by devotion, but in order to obtain that security which arose from the protection of the church. They were rather vassals than slaves, and sometimes persons of noble birth found it prudent to secure the protection of the church in this manner. Persons of the second class bound themselves to pay an annual tax or quit-rent out of their estates to a church or monastery. Besides this, they sometimes engaged to perform certain services. They were called censuales. The last class consisted of such as actually renounced their liberty, and became slaves in the strict and proper sense of the word. These were called ministeriales, and enslaved their bodies, as some of the charters bear, that they might procure the liberty of their souls. Potgiesserus de statu servorum, lib. i. cap. i. § 6, 7. How zealous the clergy were to encourage the opinions which led to this practice, will appear from a clause in a charter by which one gives up himself as a slave to a monastery. "Cum sit omni carnali ingenuitate generosius extremum quodcumq; Dei servitium, scilicet quod terrena nobilitas multos plerumg; vitiorum servos facit, servitus vero Christi nobiles virtutibus reddit, nemo autem sani capitis virtutibus vitia comparaverit, claret pro certo eum esse generosiorem, qui se Dei servitio præbuerit proniorem. Quod ego Ragnaldus intelligens," Another charted is expressed in the following words: "Eligens magis esse servus Dei quam libertus sæculi, firmiter, credens et sciens, quod servire Deo, recenare est, summaque ingenuitas sit in qua servitus comparabatur Christi," &c. Du Cange, voc. Oblatus, vol. iv. p. 1286, 1287. Great, however, as the power of religion was. it does not appear, that the enfranchisement of slaves was

a frequent practice while the feudal system preserved its vigour. On the contrary, there were laws which set bounds to it as detrimental to society. Potgiess. lib. iv. c. 2, § 6. The inferior order of men owed the recovery of their liberty to the decline of that aristocratical policy which lodged the most extensive power in the hands of a few members of the society, and depressed all the rest. When Louis X. issued his ordonance, several slaves had been so long accustomed to servitude, and their minds were so much debased by that unhappy situation, that they refused to accept of the liberty which was offered them. D'Ach. Spicel. vol. xi. p. 387. Long after the reign of Louis X. several of the French nobility continued to assert their ancient dominion over their slaves. It appears, from an ordonance of the famous Bertrand de Guesclin, constable of France, that the custom of enfranchising them was considered as a pernicious innovation. Morice Mem. pour servir des preuves à l'Hist. de Bret. tom, ii. p. 100. In some instances, when the prædial slaves were declared to be freemen, they were still bound to perform certain services to their ancient masters; and were kept in a state different from other subjects, being restricted either from purchasing land, or becoming members of a community within the precincts of the manor to which they formerly belonged. Martene et Durand. Thesaur. Anecdot. vol. i. p. 914. This, however, seems not to have been common. There is no general law for the manumission of slaves in the statute-book of England, similar to that which has been quoted from the ordonnances of the kings of France, Though the genius of the English constitution seems early to have favoured personal liberty, personal servitude, nevertheless, continued long in England in some particular places. In the year 1514, we find a charter of Henry VIII. enfranchising two slaves belonging to one of his manors. Rym. Fœder. vol. xiii. p. 470. As late as the year 1574. there is a commission from queen Elizabeth with respect to the manumission of certain bondmen belonging to her. Rymer, in Observat. on the Statutes, &c. p. 251.

## Note XXI. Sect. I. p. 50. [X]

There is no custom in the middle ages more singular than that of private war. It is a right of so great importance, and prevailed so universally, that the regulations concerning it occupy a considerable place in the system of

laws during the middle ages. M. de Montesquieu, who has unrayelled so many intricate points in feudal jurisprudence, and thrown light on so many customs formerly obscure and unintelligible, was not led by his subject to consider this. I shall, therefore, give a more minute account of the customs and regulations which directed a practice so contrary to the present ideas of civilized nations concerning government and order. 1. Among the ancient Germans, as well as other nations in a similar state of society, the right of avenging injuries was a private and personal right exercised by force of arms, without any reference to an umpire, or any appeal to a magistrate for decision. The clearest proofs of this were produced, Note V1.-2. This practice subsisted among the barbarous nations after their settlement in the provinces of the empire which they conquered: and as the causes of dissension among them multiplied, their family feuds and private wars became more frequent. Proofs of this occur in their early historians. Greg. Turon. Hist. lib. vii. c. 2; lib. viii. c. 18; lib. x. c. 27; and likewise in the codes of their laws. It was not only allowable for the relations to avenge the injuries of their family, but it was incumbent on them. Thus, by the laws of the Angli and Werini, ad quemcunque hereditas terræ pervenerit, ad illum vestis bellica id est lorica et ultio proximi, et solatio leudis, debet pertinere, tit. vi. § 5. ap. Lindenbr. Leg. Saliq. tit. 63. Leg. Longob. lib. ii. tit. 14. § 10.-3. None but gentlemen, or persons of noble birth, had the right of private war. All disputes between slaves, villani, the inhabitants of towns, and freemen of inferior condition, were decided in the courts of justice. All disputes between gentlemen and persons of inferior rank, were terminated in the same manner. The right of private war supposed nobility of birth, and equality of rank, in both the contending parties. Beaumanoir Coustumes de Beauv. ch. lix. p. 300. Ordon. des Rois de France, tom. ii. 395. § xvii. 508. § xv. &c. The dignified ecclesiastics likewise claimed and exercised the right of private war; but as it was not altogether decent for them to prosecute quarrels in person, advocati or vidames were chosen by the several monasteries and bishoprics. These were commonly men of high rank and reputation, who became the protectors of the churches and convents by which they were elected; espoused their quarrels, and fought their battles; armis omnia quæ erant ecclesiæ viriliter defendebant, et vigilanter protegebant. Passel Usage des Fiefs, tom. i. p. 144. Du Cange, voc.

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Advocatus. On many occasions, the martial ideas to which ecclesiastics of noble birth were accustomed, made them forget the pacific spirit of their profession, and led them into the field in person, at the head of their vassals, "flamma, ferro, cæde, possessiones ecclesiarum prælati defendebant." Guido Abbas ap. Du Cange, ib. p. 179.—4. It was not every injury or trespass that gave a gentleman a title to make war upon his adversary. Atrocious acts of violence, insults, and affronts, publicly committed, were legal, and permitted motives for taking arms against the authors of them. Such crimes are now punished capitally in civilized nations, at that time justified private hostilities. Beauman. ch. lix. Du Cange Dissert, xxix, sur Joinville, p. 331. But though the avenging of injuries was the only motive that could legally authorize a private war, yet disputes concerning civil property often gave rise to hostilities, and were terminated by the sword. Du Cange Dissert. p. 332.-5. All persons present, when any quarrel arose, or any act of violence was committed, were included in the war which it occasioned; for it was supposed to be impossible for any man in such a situation to remain neuter, without taking side with one or other of the contending parties. Beaum. p. 300.-6. All the kindred of the two principals in the war were included in it, and obliged to espouse the quarrel of the chieftain with whom they were connected. Du Cange, ibid. 332. This was founded on the maxim of the ancient Germans, "suscipere tam inimicitias seu patris, seu prop nqui, quam amicitias, necesse est;" a maxim natural to all rude nations, among which the form of society and political union strengthen such a sentiment. This obligation was enforced by legal authority. If a person refused to take part in the quarrel of his kinsman, and to aid him against his adversary, he was deemed to have renounced all the rights and privileges of kindredship, and became incapable of succeeding to any of his relations, or of deriving any benefit from any civil right or property belonging to them. Du Cange Dissert, p. 333. The method of ascertaining the degree of affinity which obliged a person to take part in the quarrel of a kinsman, was curious. While the church prohibited the marriage of persons within the sementh degree of affinity, the vengeance of private war extended as far as this absurd prohibition, and all who had such a remote connexion with any of the principals, were involved in the calamities of war. But when the church relaxed somewhat of its rigour, and did not extend its pro-

hibition of marrying beyond the fourth degree of affinity, the same restriction took place in the conduct of private Beauman. 303. Du Cange Dissert. 333.-7. A private war could not be carried on between two full brothers, because both have the same common kindred, and consequently neither had any persons bound to stand by him against the other in the contest: but two brothers of the half blood might wage war, because each of them has a distinct kindred. Beauman. p. 299.—8. The vassals of each principal in any private war were involved in the contest, because, by the feudal maxims, they were bound to take arms in defeace of the chieftain of whom they held, and to assist him in every quarrel. As soon therefore as feudal tenures were introduced, and this artificial connexion was established between vassals and the baron of whom they held, vassals came to be considered as in the same state with relations. Beauman. 303 .- 9. Private wars were very frequent for several centuries. Nothing contributed more to increase those disorders in government, or to encourage such ferocity of manners as reduced the nations of Europe to that wretched state which distinguished the period of history which I am reviewing. Nothing was such an obstacle to the introduction of a regular administration of jus-Nothing could more effectually discourage industry, or retard the progress and cultivation of the arts of peace. Private wars were carried on with all the destructive rage which is to be dreaded from violent resentment when armed with force, and authorized by law. It appears from the statutes prohibiting or restraining the exercise of private hostilities, that the invasion of the most barbarous enemy could not be more desolating to a country, or more fatal to its inhabitants, than those intestine wars. Ordon, tom. i. p. 701; tom. ii. p. 395. 408. 507, &c. The contemporary historians describe the excesses committed in prosecution of these quarrels in such terms as excite astonishment and horror. I shall mention only one passage from the history of the Holy War, by Guibert, abbot of Nogent: " Erat eo tempore maximis ad invicem hostilitatibus, totius Francorum regni facta turbatio screda ubiq; latrocinia, viarum obsessio; audiebantur passim, immo fiebant incendia infinita; nullis præter sola et indomita cupiditate existentie causis extruebantur prælia; et ut brevi totum claudam. quicquid obtutibus cupidorum subjacebat, nusquam attendendo cujus esset, prædæ patebat." Gesta Die per Lancos, vol. i. p. 482.

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Having thus collected the chief regulations which custom had established concerning the right and exercise of private war. I shall enumerate, in chronological order, the various expedients employed to abolish or restrain this fatal custom. 1. The first expedient employed by the civil magistrate, in order to set some bounds to the violence of private revenge. was the fixing by law the fine or composition to be paid for each different crime. The injured person was originally the sole judge concerning the nature of the wrong which he had suffered, the degree of vengeance which he should exact, as well as the species of atonement or reparation with which he might rest satisfied. Resentment became of course as implacable as it was fierce. It was often a point of honour not to forgive nor to be reconciled. it necessary to fix those compositions which make so great a figure in the laws of barbarous nations. The nature of crimes and offences was estimated by the magistrate, and the sum due to the offended was ascertained with a minute, and often a whimsical accuracy. Rotharis, the legislator of the Lombards, who reigned about the middle of the seventh century, discovers his intention both in ascertaining the composition to be paid by the offender, and in increasing its value; it is, says he, that the enmity may be extinguished, the prosecution may cease, and peace may be restored. Leg. Langob. lib. i. tit. 7. § 10.—2. About the beginning of the ninth century, Charlemagne struck at the root of the evil, and enacted, "That when any person had been guilty of a crime, or had committed an outrage, he should immediately submit to the penance which the church imposed, and offer to pay the composition which the law prescribed: and if the injured person or his kindred should refuse to accept of this, and presume to avenge themselves by force of arms, their lands and properties should be forfeited." Capitul. A. D. 802, edit. Baluz. vol. i. 371.-3. But in this as well as in other regulations, the genius of Charlemagne advanced before the spirit of his agc. The ideas of his contemporaries concerning regular government were too imperfect, and their manners too fierce to submit to this law. Private wars, with all the calastities which they occasioned, became more frequent than ever after the death of that ==at monarch. His successors were unable to restrain them. The church found it necessary to interpose. most early of these interpositions now extant, is towards the end of the tenth century. In the year 990, several bishops in the south of France assembled, and published

various regulations, in order to set some bounds to the violence and frequency of private wars; if any person within their diocesses should venture to transgress, they ordained that he should be excluded from all Christian privileges during his life, and be denied Christian burial after his Du Mont Corps Diplomatique, tom. i. p. 41. These, however, were only partial remedies; and therefore a council was held at Limoges, A. D. 994. The bodies of the saints, according to the custom of those ages, were carried thither; and by these sacred relics men were exhorted to lay down their arms, to extinguish their animosities, and to swear than they would not, for the future, violate the public peace by their private hostilities. Bouquet Recueil des Histor, vol. x. p. 49, 147. Several other councils issued decrees to the same effect. Du Cange Dissert. 343. -4. But the authority of councils, how venerable soever in those ages, was not sufficient to abolish a custom which flattered the pride of the nobles, and gratified their favourite passions. The evil grew so intolerable, that it became necessary to employ supernatural means for suppressing it. A bishop of Aquitaine, A. D. 1032, pretended that an angel had appeared to him, and brought him a writing from heaven, enjoining men to cease from their hostilities, and to be reconciled to each other. It was during a season of public calamity that he published this revelation. minds of men were disposed to receive pious impressions, and willing to perform any thing in order to avert the wrath of Heaven. A general peace and cessation from hostilities took place, and continued for seven years; and aresolution was formed that no man should, in times to come, attack or molest his adversaries during the seasons set apart for celebrating the great festivals of the church, or from the evening of Thursday in each week, to the morning of Monday in the week ensuing, the intervening days being considered as particularly holy, our Lord's Passion having happened on one of these days, and his Resurrection on another. A change in the dispositions of men so sudden, and which produced a resolution so unexpected, was considered as miraculous; and the respite from hostilities which followed upon it, was called The Truce of God. Glaber. Rodulphus Histor. lib. v. ap. Bouquet, vol. x. p. 59. This, from being a regulation or concert in one kingdom, became a general law in Christendom, was confirmed by the authority of several popes, and the violators were subjected to the peality of excommunication. Corpus Jur. Canon. Decretal.

lib, i. tit. 34. c. 1. Du Cange Glossar, voc. Treugu. An act of the council of Touluies in Roussillon, A. D. 1041. containing all the stipulations required by the truce of God, is published by Dom de Vic et Dom Vaisette, Hist. de Languedoc, tom. ii. Preuves, p. 206. A cessation from hostilities during three complete days in every week, allowed such a considerable space for the passions of the antagonists to cool, and for the people to enjoy a respite from the calamities of war, as well as to take measures for their own security, that, if this truce of God had been exactly observed, it must have gone far towards putting an end to private wars. This, however, seems not to have been the case; the nobles, disregarding the truce, prosecuted their quarrels without interruption as formerly. Qua nimirum tempestate, universæ provinciæ adeo devastationis continuæ importunitate inquietantur, ut ne ipsa, pro observatione divinæ pacis, professa sacramenta custodiantur. Abbas Uspurgensis, apud Datt. de pace imperii publica, p. 13. No. 35. The violent spirit of the nobility could not be restrained by any engagements. The complaints of this were frequent; and bishops, in order to compel them to renew their vows and promises of ceasing from their private wars, were obliged to enjoin their clergy to suspend the performance of divine service and the exercise of any religious function within the parishes of such as were refractory and obstinate. Hist. de Langued. par D. D. de Vic et Vaisette, tom. ii. Preuves, p. 118.—5. The people, eager to obtain relief from their sufferings, called in a second time revelation to their aid. Towards the end of the twelfth century, a carpenter in Guienne gave out, that Jesus Christ, together with the blessed Virgin, had appeared to him, and having commanded him to exhort mankind to peace, had given him, as a proof of his mission, an image of the Virgin holding her son in her arms, with this inscription, "Lamb of God, who takest away the sins of the world, give us peace." This low fanatic addressed himself to an ignorant age, prone to credit what was marvellous. He was received as an inspired messenger of God. Many prelates and barons assembled at Puy, and took an oath, not only to make peace with all their enemies, but to attack such as refused to lay down their arms, and to be reconciled to their enemies. They formed on association for this purpose, and assumed the honourable name of "The Brotherhood of God." Robertus de Monte Michaele, au. M. de Lauriere Pref. tom. i. Ordon. p. 29. But the influence of this superstitious terror

devotion was not of long continuance. -6. The civil magistrate was obliged to exert his authority in order to check a custom which threatened the dissolution of government. Philip Augustus, as some imagine, or St. Louis, as is more probable, published an ordonance, A. D. 1245, prohibiting any person to commence hostilities against the friends and vassals of his adversary, until forty days after the commission of the crime or offence which gave rise to the quarrel; declaring, that if any man presumed to transgress this statute, he should be considered as guilty of a breach of the public peace, and be tried and punished by the judges-ordinary as a traitor. Ordon. tom. i. p. 56. This was called "The Royal Truce," and afforded time for the violence of resentment to subside, as well as leisure for the good offices of such as were willing to compose the difference. The happy effects of this regulation seem to have been considerable, if we may judge from the solicitude of succeeding monarchs to enforce it .-- 7. In order to restrain the exercise of private war still farther, Philip the Fair, towards the close of the same century, A. D. 1296, published an ordonnance, commanding all private hostilities to cease while he was engaged in war against the enemies of the state. Ordon. tom. i. p. 328. 390. This regulation, which seems to be almost essential to the existence and preservation of society, was often renewed by his successors, and being enforced by the regal authority, proved a considerable check to the destructive contests of the nobles. Both these regulations, introduced first into France, were adopted by the other nations of Europe.-8. The evil, however, was so inveterate, that it did not yield to all these remedies. No sooner was public peace established in any kingdom, than the barons renewed their private hostilities. They not only struggled to maintain this pernicious right, but to secure the exercise of it without any restraint. Upon the death of Philip the Fair, the nobles of different provinces in France formed associations, and presented remonstrances to his successor, demanding the repeal of several laws, by which he had abridged the privileges of their order. Among these, the right of private war is always mentioned as one of the most valuable; and they claim that the restraint imposed by the truce of God, the royal truce, as well as that arising from the ordonnance of the year 1296, should be taken off. In some instances the two sons of Philip, who mounted the throne successively, eluded their demands; in others, they were Tired to make concessions. Ordon. tom. i. p. 551. 557.

561, 573. The ordonnances to which I refer are of such ength that I cannot insert them, but they are extremely curious, and may be peculiarly instructive to an English reader, as they throw considerable light on that period of English history, in which the attempts to circumscribe the regal prerogative were carried on, not by the people struggling for liberty, but by the nobles contending for power. It is not necessary to produce any evidence of the continuance and frequency of private wars under the successors of Philip the Fair .- 9. A practice somewhat similar to the royal truce was introduced, in order to strengthen and extend it. Bonds of assurance, or mutual security, were demanded from the parties at variance, by which they obliged themselves to abstain from all hostilities, either during a time mentioned in the bond, or for ever; and became subject to heavy penalties, if they violated this obligation. These bonds were sometimes granted voluntarily, but more frequently exacted by the authority of the civil magistrate. Upon a petition from the party who felt himself weakest. the magistrates summoned his adversary to appear in court. and obliged him to give him a bond of assurance. If, after that, he committed any farther hostilities, he became subject to all the penalties of treason. This restraint on private war was known in the age of St. Louis. Establissemens, liv. i. c. 28. It was frequent in Bretagne; and what is very remarkable, such bonds of assurance were given mutually between vassals and the lord of whom they held. Oliver de Clisson grants one to the duke of Bretagne, his sovereign. Morice Mem. pour servir de preuves à l'Hist. de Bret. tom. i. p. 846; ii. p. 371. Many examples of bonds of assurance in other provinces of France are collected by Brussel, tom. ii. p. 856. The nobles of Burgundy remonstrated against this practice, and obtained exemption from it as an encroachment on the privileges of their order. Ordon, tom. i. p. 558. This mode of security was first introduced in cities. and the good effects of it having been felt there, was extended to the nobles. See Note XVI.-10. The calamities occasioned by private wars became at some times so intolerable, that the nobles entered into voluntary associations. binding themselves to refer all matters in dispute, whether cercerning civil property, or points of honour, to the determination of the majority of the associates. Mem. pour servir de pieuves à l'Hist. de Bret. tom. ii. p. 728.—11. But all these expedients proving ineffectual. Charles VI. A.D. 1413, issued an ordonnance, expressly

prohibiting private wars on any pretext whatsoever, with power to the judge-ordinary to compel all persons to comply with this injunction, and to punish such as should prove refractory or disobedient, by imprisoning their persons, seizing their goods, and appointing the officers of justice, Mangeurs et Gasteurs, to live at free quarters on their estate. If those who were disobedient to this edict could not be personally arrested, he appointed their friends and vassals to be seized, and detained until they gave surety for keeping the peace; and he abolished all laws, customs, or privileges, which might be pleaded in opposition to this ordonizance. Ordon. tom. x. p. 138. How slow is the progress of reason and of civil order! Regulations which to us appear so equitable, obvious, and simple, required the efforts of civil and ecclesiastical authority, during several centuries, to introduce and establish them. Even posterior to this period, Louis XI. was obliged to abolish private wars in Dauphine by a particular edict,

A. D. 1451. Du Cange Dissert. p. 348.

This Note would swell to a disproportionate bulk, if I should attempt to inquire with the same minute attention into the progress of this pernicious custom in the other countries of Europe. In England, the ideas of the Saxons concerning personal revenge, the right of private wars, and the composition due to the party offended, seem to have been much the same with those which prevailed on the continent. The law of Ina de vindicantibus, in the eighth century, Lamb. p. 3.; those of Edmund in the tenth century, de homicidio, Lamb. p. 72, et de inimicitiis, p. 76; and those of Edward the Confessor, in the eleventh century, de temporibus et diebus pacis, or Treuga Dei, Lamb. p. 126, are perfectly similar to the ordonnances of the French kings their contemporaries. The laws of Edward, de pace regis, are still more explicit than those of the French monarchs, and, by several provisions in them, discover that a more perfect police was established in England at that period. Lambaid, p. 128, fol. vers. Even after the Conquest, private wars, and the regulations for preventing them, were not altogether unknown, as appears from Madox Formulare Anglicanum, No. CXLV. and from the extracts from Domesday Book, published by Gale, Scriptores Hist. Britan. p. 759. 777. The well-known clause in the form of an English indictment, which, as an aggravation of the criminal's guilt, mentions his having assaulted a person > ho was in the peace of God and of the king, seems to be

borrowed from the Treuga or Pax Dei, and the Pax Regis. which I have explained. But after the Conquest, the mention of private wars among the nobility occurs more rarely in the English history, than in that of any other European nation, and no laws concerning them are to be found in the body of their statutes. Such a change in their own manners, and such a variation from those of their neighbours, is remarkable. Is it to be ascribed to the extraordinary power that William the Norman acquired by right of conquest, and transmitted to his successors, which rendered the execution of justice more vigorous and decisive, and the jurisdiction of the king's court more extensive than under the monarchs on the continent? Or was it owing to the settlement of the Normans in England, who, having never adopted the practice of private war in their own country, abolished it in the kingdom which they had conquered? It is asserted in an ordonnance of John, king of France, that in all times past persons of every rank in Normandy have been permitted to wage private war, and the practice has been deemed unlawful. Ordon tom, ii. p. 407. If this fact were certain, it would go far towards explaining the peculiarity which I have mentioned. But as there are some English Acts of Parliament which, according to the remark of the learned author of the Observations on the Statutes, chiefly the more ancient, recite falsehoods, it may be added, that this is not peculiar to the laws of that country. Notwithstanding the positive assertion contained in this public law of France, there is good reason for considering it as a statute which recites a falsehood. This, however, is not the place for discussing that point. It is an inquiry not unworthy the curiosity of an English antiquary.

In Castile, the pernicious practice of private war prevailed, and was authorized by the customs and law of the kingdom. Leges Tauri, tit. 76. cum commentario Anton. Gomezii, p. 551. As the Castilian nobles were no less turbulent than powerful, their quarrels and hostilities involved their country in many calamities. Innumerable proofs of this occur in Marisna. In Aragon, the right of private revenge was likewise authorized by law; exercised in its full extent, and accompanied with the same unhappy consequences. Hieron. Blanca Comment. de Rebus Arag. ap. Schotti Hispan. illustrat. vol. iii, p. 733. Lex Jacobi I. A. D. 1247. Fueros & Observancias del Reyno de Aragon, lib. ix. p. 182. Several confederacies between

the kings of Aragon and their nobles, for the restoring of peace, founded on the truce of God, are still extant. Petr. de Marca, Marca sive Limes Hispanic. App. 1303. 1388. 1428. As early as the year 1165, we find a combination of the king and court of Aragon, in order to abolish the right of private war, and to punish those who presumed to claim that privilege. Anales de Aragon por Zurita, vol. i. p. 73. But the evil was so inveterate, that, as late as A.D. 1519, Charles V. was obliged to publish a law enforcing all former regulations tending to suppress this practice. Fueros et Observanc. lib ix. 183. b.

The Lombards, and other northern nations who settled in Italy, introduced the same maxims concerning the right of revenge into that country, and these were followed by the same effects. As the progress of the evil was perfectly similar to what happened in France, the expedients employed to check its career, or to extirpate it finally, resembled those which I have enumerated. Murat. Ant.

Ital. vol. ii. p. 306, &c.

In Germany, the disorders and calamities occasioned by the right of private war, were greater and more intolerable than in any other country of Europe. The Imperial authority was so much shaken and enfeebled by the violence of the civil wars excited by the contests between the popes and the emperors of the Franconian and Suabian lines. that not only the nobility, but the cities acquired almost independent power, and scorned all subordination and obedience to the laws. The frequency of these faida, or private wars, is often mentioned in the German annals, and the fatal effects of them are most pathetically described. Datt, de Pace Imper. pub. lib. i. cap. v. No. 30, et passim. The Germans early adopted the Treuga Dei, which was first established in France. This, however, proved but a temporary and ineffectual remedy. The disorders multiplied so fast, and grew to be so enormous, that they threatened the dissolution of society, and compelled the Germans to have recourse to the only remedy of the evil, viz. an absolute prohibition of private wars. The emperor William published his edict to this purpose, A.D. 1255, a hundred and sixty years previous to the ordonnance of Charles VI. in France. Datt, lib. i. cap. 4. No. 20. But neither he nor his successors had authority to secure the observance of it. This gave rise to a practice in Germany. which conveys to us a striking idea both of the intolerable colamities occasioned by private wars, and of the feebleness

of government during the twelfth and thirteenth centuries. The cities and nobles entered into alliances and associations. by which they bound themselves to maintain the public peace, and to make war on such as should violate it. This was the origin of the league of the Rhine, of Suabia, and of many smaller confederacies distinguished by various names. The rise, progress, and beneficial effects of these associations are traced by Datt with great accuracy. Vi hatever degree of public peace or of regular administration was preserved in the empire, from the beginning of the twelfth century to the close of the fifteenth, Germany owes to these leagues. During that period, political order, respect for the laws, together with equal administration of justice, made considerable progress in Germany. But the final and perpetual abolition of the right of private war was not accomplished until A. D. 1495. The Imperial authority was, by that time, more firmly established; the ideas of men with respect to government and subordination were become more just. That barbarous and pernicious privilege of waging private war, which the nobles had so long possessed, was declared to be incompatible with the happiness and existence of society. In order to terminate any differences which might arise among the various members of the Germanic body, the Imperial chamber was instituted with supreme jurisdiction, to judge without appeal in every question brought before it. That court has subsisted since that period, forming a very respectable tribunal of essential importance in the German constitution. lib. iii. iv. v. Pfeffel Abregé de l'Histoire du Droit. &c. p. 556.

## Note XXII. Sect. I. p. 59. [Y]

Ir would be tedious, and of little use, to enumerate the various modes of appealing to the justice of God, which superstition introduced during the ages of ignorance. I shall mention only one, because we have an account of it in a placitum, or trial, in the presence of Charlemagne, from which we may learn the imperfect manner in which justice was administered even during his reign. In the year 775, a contest arose between the bishop of Paris and the abbot of St. Denys, concerning the property of a small abbey. Each of them exhibited deeds and records, in order to prove the right to be in them. Instead of trying the authenticity, or considering the import of these, the point was referred to the judicium crucis. Each produced a

person, who, during the celebration of mass, stood before the cross with his arms expanded; and he, whose representative first became weary, and altered his posture, lost the cause. The person employed by the bishop, on this occasion, had less strength or less spirit than his adversary, and the question was decided in favour of the abbot. billon de Re Diplomat. lib. vi. p. 498. If a prince so enlightened as Charlemagne, countenanced such an absurd mode of decision, it is no wonder that other monarchs should tolerate it so long. M. de Montesquieu has treated of the trial by judicial combat at considerable length. The two talents which distinguish that illustrious author, industry in tracing all the circumstances of ancient and obscure institutions, and sagacity in penetrating into the causes and principles which contributed to establish them, are equally conspicuous in his observations on this subject. To these I refer the reader, as they contain most of the principles by which I have endeavoured to explain this practice. l'Esprit des Loix, lib. xxviii. It seems to be probable from the remarks of M. de Montesquien, as well as from the facts produced by Muratori, tom. iii. Dissert, xxxviii, that appeals to the justice of God by the experiments with fire and water, &c. were frequent among the people who settled in the different provinces of the Roman empire, before they had recourse to the judicial combat; and yet the judicial combat seems to have been the most ancient mode of terminating any controversy among the barbarous nations in their original settlements. This is evident from Velleius Paterculus, lib. ii. c. 118. who informs us, that all questions which were decided among the Romans by legal trial, were terminated among the Germans by arms. The same thing appears in the ancient laws and customs of the Swedes, auoted by Jo. O. Stiernhöök de jure Sueonum et Gothorum vetusto, 4to. Holmiæ, 1682, lib. i. c. 7. It is probable that when the various tribes which invaded the empire were converted to Christianity, their ancient custom of allowing judicial combats appeared so glaringly repugnant to the precepts of religion, that, for some time it was abolished. and, by degrees, several circumstances which I have mentioned, led them to resume it.

It seems likewise to be probable from a law quoted by Stiernhöök in the treatise which I have mentioned, that the judicial combat was originally permitted, in order to determine points respecting the personal character or reputation of individuals, and was afterward extended not only to criminal cases, but to questions concerning property. The words of the law are, "If any man shall say to another these repreachful words, 'You are not a man equal to other men.' or, 'You have not the heart of a man,' and the other shall reply, ' I am a man as good as you,' let them meet on the highway. If he who first gave offence appear and the person offended absent himself, let the latter be deemed a worse man even than he was called; let him not be admitted to give evidence in judgment either for man or woman. and let him not have the privilege of making a testament. If he who gave the offence be absent, and only the person offended appear, let him call upon the other thrice with a loud voice, and make a mark upon the earth, and then let him who absented himself be deemed infamous, because he uttered words which he durst not support. If both shall appear properly armed, and the person offended shall fall in the combat, let a half compensation be paid for his death. But if the person who gave the offence shall fall, let it be imputed to his own rashness. The petulance of his tongue hath been fatal to him." Let him die in the field without any compensation being demanded for his death." Lex Uplandica, ap. Stiern. p. 76. Martial people were extremely delicate with respect to every thing that affected their reputation as soldiers. By the laws of the Salians, if any man called another a hare, or accused him of having left his shield in the field of battle, he was ordained to pay a large fine. Leg. Sal. tit. xxxii. § 4.6. By the law of the Lombards, if any one called another arga, i. e. a good-fornothing fellow, he might immediately challenge him to combat. Leg. Longob. lib. i. tit. v. § 1. By the law of the Salians, if one called another cenitus, a term of reproach equivalent to arga, he was bound to pay a very high fine. Tit. xxxii. § 1. Paulus Diaconus relates the violent impression which this reproachful expression made upon one of his countrymen, and the fatal effects with which it was attended. De Gestis Longobard, liv. vi. c. 34. Thus the ideas concerning the point of honour, which we are apt to consider as a modern refinement, as well as the practice of duelling, to which it gave rise, are derived from the notions of our ancestors while in a state of society very little improved. As M. de Montesquieu's views of this subject did not lead

him to consider every circumstance relative to judicial combats, I shall mention some particular facts necessary for the illustration of what I have said with respect to them. A remarkable instance occurs of the decision of an abstract

point of law by combat. A question arose in the tenth century concerning the right of representation, which was not then fixed, though now universally established in every part of Europe. "It was a matter of doubt and dispute (saith the historian) whether the sons of a son ought to be reckoned among the children of a family, and succeed equally with their uncles, if their father happened to die while their grandfather was alive. An assembly was called to deliberate on this point, and it was the general opinion that it ought to be remitted to the examination and decision of judges. But the emperor following a better course, and desirous of dealing honourably with his people and nobles. appointed the matter to be decided by battle between two champions. He who appeared in behalf of the right of children to represent their deceased father was victorious; and it was established, by a perpetual decree, that they should hereafter share in the inheritance together with their uncles." Whittickindus Corbiensis, lib. Annal. ap. M. de Lauriere Pref. Ordon. vol. i. p. xxxiii. If we can suppose the caprice of folly to lead men to any action more extravagant than this of settling a point in law by combat, it must be that of referring the truth or falsehood of a religious opinion to be decided in the same manner. To the disgrace of human reason, it has been capable even of this extravagance. A question was agitated in Spain in the eleventh century, whether the Musarabic Liturgy and ritual which had been used in the churches of Spain, or that approved of by the See of Rome, which differed in many particulars from the other, contained the form of worship most acceptable to the Deity. The Spaniards contended zealously for the ritual of their ancestors. The popes urged them to receive that to which they had given their infallible sanction. A violent contest arose. The nobles proposed to decide the controversy by the sword. The king approved of this method of decision. Two knights in complete armour entered the lists. John Ruys de Matanca, the champion of the Musarabic Liturgy, was victorious. the queen and archbishop of Toledo, who favoured the other form, insisted on having the matter submitted to another trial, and had interest enough to prevail in a request, inconsistent with the laws of combat, which being considered as an appeal to God, the decision ought to have been acquiesced in as final. A great fire was kindled. A copy of each littingy was cast into the flames. It was agreed that he book which stood this proof, and remained untouched.

should be received in all the churches of Spain. The Musarabic Liturgy triumphed likewise in this trial, and if we may believe Roderigo de Toledo, remained unhurt by the fire, when the other was reduced to ashes. The queen and archbishop had power or art sufficient to elude this decision also, and the use of the Musarabic form of devotion was permitted only in certain churches. A determination no less extraordinary than the whole transaction. Roder, de Toledo, quoted by P. Orleans, Hist. de Revol. d'Espagne, tom. i. p. 217. Mariana, lib. i. c. 18. vol. i. p. 378. A remarkable proof of the general use of trial by combat, and of the predilection for that mode of decision, occurs in the laws of the Lombards. It was a custom in the middle ages, that any person might signify publicly the law to which he chose to be subjected; and by the prescriptions of that law he was obliged to regulate his transactions, without being bound to comply with any practice authorized by other codes of law. Persons who had subjected themselvss to the Roman law, and adhered to the ancient jurisprudence, as far as any knowledge of it was retained in those ages of ignorance, were exempted from paying any regard to the forms of proceedings established by the laws of Burgundians, Lombards, and other barbarous people. But the Emperor Otho, in direct contradiction to this received maxim, ordained, "That all persons, under whatever law they lived, even although it were the Roman law, should be bound to conform to the edicts concerning the trial by combat." Leg. Longob. lib. ii. tit. 55. § 38. While the trial by judicial combat subsisted, proof by charters, contracts, or other deeds, became ineffectual; and even this species of written evidence, calculated to render the proceedings of courts certain and decisive, was eluded. When a charter or other instrument was produced by one of the parties, his opponent might challenge it, affirm that it was false and forged, and offer to prove this by combat. Leg. Longob. ibid. § 34. It is true, that among the reasons enumerated by Beaumanoir, on account of which judges might refuse to permit a trial by combat, one is, "If the point in contest can be cleasly proved or ascertained by other evidence." Coust. de Beauv. ch. 63. p. 325. But that regulation removed the evil only a single step. the party who suspected that a witness was about to depose in a manner unfavourable to his cause, might accuse him of being suborned, give him the lie, and challenge him to combat; if the witness was vanquished in battle, no other evidence gould be admitted, and the party by whom he was summoned to appear lost his cause. Lag. Baivar. tit. 16. § 2. Leg. Burgund. tit. 45. Beauman. ch. 61. p. 315. The reason given for obliging a witness to accept of a defiance, and to defend himself by combat, is remarkable, and contains the same idea which is still the foundation of what is called the point of honour; "for it is just, that if any one affirms that he perfectly knows the truth of any thing, and offers to give oath upon it, that he should not hesitate to maintain the veracity of his affirmation in combat." Leg.

Burgund. tit. 45.

That the trial by judicial combat was established in every country of Europe, is a fact well known, and requires no proof. That this mode of decision was frequent, appears not only from the codes of ancient laws which established it, but from the earliest writers concerning the practice of law in the different nations of Europe. They treat of this custom at great length; they enumerate the regulations concerning it with minute accuracy; and explain them with much solicitude. It made a capital and extensive article in jurisprudence. There is not any one subject in their system of law which Beaumanoir, Defontaines, or the compilers of the Assises de Jerusalem, seem to have considered as of greater importance; and none upon which they have bestowed so much attention. The same observation will hold with respect to the early authors of other nations. It appears from Madox, that trials of this kind were so frequent in England, that fines, paid on these occasions, made no inconsiderable branch of the King's History of the Exchequer, vol. i. p. 349. A very curious account of a judicial combat between Mesire Robert de Beaumanoir, and Mesire Pierre Tournemine, in presence of the duke of Bretagne, A.D. 1385, is published by Morice, Mem. pour servir de preuves à l'Hist. de Bretagne, tom. ii. p. 498. All the formalities observed in such extraordinary proceedings are there described more minutely than in any ancient monument which I have had an opportunity of considering. nemine was accused by Beaumanoir of having murdered his brother. The former was vanquished, but was saved from being hanged upon the spot, by the generous intercession of his antagonist. A good account of the origin of the laws concerning fudicial combat is published in the History of Pavia, by Bernardo Sacci, lib. ix. c. 8. in Graev. Thes. Antiq. Ital. vol. iii. 743.

This mode of trial was so acceptable, that ecclesiastics. notwithstanding the prohibitions of the church, were constrained not only to connive at the practice, but to authorize it. A remarkable instance of this is produced by Pasquier, Recherches, lib. iv. ch. i. p. 350. The abbot Wittikindus, whose words I have produced in this Note. considered the determination of a point in law by combat, as the best and most honourable mode of decision. In the year 978, a judicial combat was fought in the presence of the emperor. The archbishop Aldebert advised him to terminate a contest which had arisen between two noblemen of his court, by this mode of decision. The vanquished combatant, though a person of high rank, was beheaded on the spot. Chronic. Ditmari Episc. Mersb. chez Bouquet Recueil des Hist. tom. x. p. 121. Questions concerning the property of churches and monasteries were decided by combat. In the year 961, a controversy concerning the church of St. Medard, whether it belonged to the abbey of Beaulieu or not, was terminated by judicial combat. Bouquet Recueil des Hist. tom. ix. p. 729. Ibid. p. 612, &c. The emperor Henry I. declares, that this law, authorizing the practice of judicial combats, was enacted with consent and applause of many faithful bishops. Ibid. p. 231. remarkably did the martial ideas of those ages prevail over the genius and maxims of the canon law, which in other instances was in the highest credit and authority with ecclesiastics. A judicial combat was appointed in Spain. by Charles V., A.D. 1522. The combatants fought in the emperor's presence, and the battle was conducted with all the rites prescribed by the ancient laws of chivalry. The whole transaction is described at great length by Pontus Heuterus Rer. Austriac. lib. viii. c. 17. p. 205.

The last instance which occurs in the history of France, of a judicial combat authorized by the magistrate, was the famous one between M. Jarnac and M. dela Chaistaiguerie, A.D. 1547. A trial by combat was appointed in England A.D. 1571, under the inspection of the judges in the court of Common Pleas; and though it was not carried to the same extremity with the former, queen Elizabeth having interposed her authority, and enjoined the parties to compound the matter, yet, in order to preserve their honour, the lists were marked out, and all the forms previous to the combat were observed with much ceremony. Spelm. Gloss. voc. Campus, p. 103. In the year 1631, a judicial combat was appointed between Douald Lord Rea, and

David Ramsay, Esq. by the authority of the lord high-constable and earl marshal of England; but that quarrel likewise terminated without bloodshed, being accommodated by Charles I. Another instance occurs seven years later. Rushworth, in Observations on the Statutes, &c. p. 266.

# Note XXIII. Sect. I. p. 64. [Z]

THE text contains the great outlines which mark the course of public and private jurisdiction in the several nations of Europe. I shall here follow more minutely the various steps of this progress, as the matter is curious and important enough to merit this attention. The payment of a fine by way of satisfaction to the person or family injured, was the first device of a rude people, in order to check the career of private resentment, and to extinguish those faida, or deadly feudes, which were prosecuted among them with the utmost violence. This custom may be traced back to the ancient Germans, Tacit. de Morib. Germ. c. 21, and prevailed among other uncivilized nations. Many examples of this are collected by the ingenious and learned author of Historical Law Tracts, vol. i. p. 41. These fines were ascertained and levied in three different manners. At first they were settled by voluntary agreement between the parties at variance. When their rage began to subside, and they felt the bad effects of their continuing in enmity, they came to terms of concord, and the satisfaction made was called a composition, implying that it was fixed by mutual consent. De l'Esprit des Loix, lib. xxx. c. 19. It is apparent, from some of the more ancient codes of law, that at the time when these were compiled, matters still remained in that simple state. In certain cases, the person who had committed an offence, was left exposed to the resentment of those whom he had injured, until he should recover their favour, quoquo modo potucrit. Lex Frision. tit. 11. § 1. The next mode of levving these fines was by the sentence of arbiters. An arbiter is called, in the Regiam Majestatem, amicabilis compositor, lib. xi. c. 4. § 10. He could estimate the degree of offence with more impartiality than the parties interested, and determine with greater equity what satisfaction ought to be demanded. It is difficult to bring an authentic proof of a custom previous to the records preserved in any nation of Europe. But one of the Formulæ Andegavenses, compiled in the sixth century, seems to allude to a transaction carried on, not by the authority of a

judge, but by the mediation of arbiters, chosen by mutual consent. Bouquet Recueil des Histor. tom. iv. p. 566. But as an arbiter wanted authority to enforce his decisions, judges were appointed, with compulsive power to oblige both parties to acquiesce in their decisions. Previous to this last step, the expedient of paying compositions was an imperfect remedy against the pernicious effects of private resentment. As soon as this important change was introduced, the magistrate, putting himself in place of the person injured, ascertained the composition with which he ought to rest satisfied. Every possible injury that could occur in the intercourse of civil society was considered. and estimated, and the compositions due to the person aggrieved were fixed with such minute attention, as discovers, in most cases, amazing discernment and delicacy, in some instances unaccountable caprice. Besides the composition payable to the private party, a certain sum. called a fredum, was paid to the king or state, as Tacitus expresses it, or to the fiscus, in the language of the barbarous laws. Some authors, blending the refined ideas of modern policy with their reasonings concerning ancient transactions, have imagined that the fredum was a compensation due to the community on account of the violation of the public peace. But it is manifestly nothing more than the price paid to the magistrate for the protection which he afforded against the violence of resentment. The enacting of this was a considerable step towards the improvement in criminal jurisprudence. In some of the more ancient codes of law, the freda are altogether omitted, or so seldom mentioned, that it is evident they were but little known. In the later codes, the fredum is as precisely specified as the composition. In common cases it was equal to the third part of the composition. Capitul. vol. i. p. 52. In some extraordinary cases, where it was more difficult to protect the person who had committed violence. the fredum was augmented. Capitul. vol. i. p. 515. These freda made a considerable branch in the revenues of the barons; and in whatever district territorial jurisdiction was granted, the royal judges were prohibited from levying any freda. In explaining the nature of the fredum, I have followed, in a great measure, the opinion of M. de Montesquieu, though I know that several learned antiquaries have taken the word in a different sense. De l'Esprit des Loix? liv. xxx. c. 20, &c. The great object of judges was to compel the one party to give, and the other to accept, the

satisfaction prescribed. They multiplied regulations to this purpose, and enforced them by grievous penalties. Leg. Longob. lib. i. tit. 9. § 34. Ibid. tit. 37. § 1, 2. vol. i. p. 371. § 22. The person who received a composition was obliged to cease from all farther hostility, and to confirm his reconciliation with the adverse party by an oath. Leg. Longob. lib. i. tit. 9. § 8. As an additional and more permanent evidence of reconciliation, he was required to grant a bond of security to the person from whom he received a composition, absolving him from all farther prosecution. Marculfus, and the other collectors of ancient writs, have preserved several different forms of such bonds. Marc. lib. xi. § 18. Append. § 23. Sirmondicæ, § 39. The Letters of Slanes, known in the law of Scotland, are perfectly similar to these bonds of security. By the letters of Slanes, the heirs and relations of a person who had been murdered, bound themselves, in consideration of an Assythment or composition paid to them, to forgive, "pass over, and for ever forget, and in oblivion inter, all rancour, malice, revenge, prejudice, grudge, and resentment, that they have or may conceive against the aggressor or his posterity, for the crime which he had committed, and discharge him of all action, civil or criminal, against him or his estate, for now and ever." System of Styles by Dallas of St. Martin's, p. 862. In the ancient form of letters of Slanes, the private party not only forgives and forgets, but pardons and grants remission of the crime. This practice Dallas, reasoning according to the principles of his own age, considers as an encroachment on the rights of sovereignty, as none, says he, could pardon a criminal but the king. Ibid. But in early and rude times, the prosecution, the punishment, and the pardon of criminals, were all deeds of the private person who was injured. Madox has published two writs, one in the reign of Edward I., the other in the reign of Edward III., by which private persons grant a release or pardon of all trespasses, felonics, robberies, and murders, committed. Formul. Anglican. No. 702. 705. In the last of these instruments, some regard seems to be paid to the rights of the sovereign, for the pardon is granted en quant que en nous est. Even after the authority of the magistrate was interposed in punishing crimes, the punishment of criminals is long considered chiefly as a gratification to the resentment of the persons who have been injured. In Persia a murderer is still delivered to the relations of the person

whom he has slain, who put him to death with their own hands. If they refuse to accept of a sum of money as a compensation, the sovereign, absolute as he is, cannot pardon the nurderer. Voyages de Chardin, iii. p. 417. edit. 1735, 4to. Voyages de Tavernier, liv. 5. c. 5. 10. Among the Arabians, though one of the first polished people in the East, the same custom still subsists. Description de l'Arabie par M. Nichular, p. 28. By a law in the kingdom of Aragon, as late as the year 1564, the punishment of one condemned to death cannot be mitigated but by consent of the parties who have been injured. Fueros et Observancias del Reyno de Aragon, p. 204, 6.

If, after all the engagements to cease from enmity which I have mentioned, any person renewed hostilities, and was guilty of any violence, either towards the person from whom he had received a composition, or towards his relations and heirs, this was deemed a most being crime, and punished with extraordinary rigour. It was an act of direct rebellion against the authority of the magistrate, and was repressed by the interposition of all his power. Leg. Longob. lib. i. tit. 9. § 8. 34. Capit. vol. i. p. 371. § 22. Thus the avenging of injuries was taken out of private hands, a legal composition was established, and peace and amity were restored under the inspection, and by the authority, of a judge. It is evident, that at the time when the barbarians settled in the provinces of the Roman empire, they had fixed judges established among them with compulsive authority. Persons vested with this character are mentioned by the earliest historians. Du Cange, voc. Judices. The right of territorial jurisdiction was not altogether a usurpation of the feudal barons, or an invasion of the prerogative of the sovereign. There is good reason to believe, that the powerful leaders, who seized different districts of the countries which they conquered, and kept possession of them as allodial property. assumed, from the beginning, the right of jurisdiction, and exercised it within their own territories. This jurisdiction was supreme, and extended to all causes. The clearest proofs of this are produced by M. Bouquet. Le Droit Publique de France Ecclairci, &c. Com. i p. 206, &c. The privilege of judging his own vassals, appears to have been originally a right inherent in every baron who held a fief. As far back as the archives of nations can conduct us with any certainty, we find the jurisdiction and fief united. One of the earliest charters to a layman which I have met with, is that of Ludovicus Pius, A. D. 814. And it contains the

right of territorial jurisdiction in the most express and extensive terms. Capitul. vol. ii. p. 1405. There are many charters to churches and monasteries of a more early date, containing grants of similar jurisdiction, and prohibiting any royal judge to enter the territories of those churches or monasteries, or to perform any act of judicial authority there. Bouquet Recueil des Hist. tom. iv. p. 628. 631. 633; tom. v. p. 703. 710. 752. 762. Muratori has published many very ancient charters containing the same immunities. Autiq. Ital. Dissert. lxx. In most of these deeds, the royal judge is prohibited from exacting the freda due to the possessor of territorial jurisdiction, which shews that they constituted a valuable part of the revenue of each superior lord at that juncture. The expense of obtaining a sentence in a court of justice during the middle ages was so considerable, that this circumstance alone was sufficient to render men unwilling to decide any contest in judicial form. It appears from a charter in the thirteenth century, that the baron who had the right of justice received the fifth part of the value of every subject, the property of which was tried and determined in his court. If, after the commencement of a lawsuit, the parties terminated the contest in an amicable manner, or by arbitration, they were nevertheless bound to pay the fifth part of the subject contested, to the court before which the suit had been brought. Hist, de Dauphind, Geneve, 1722, tom. i. p. 22. Similar to this is a regulation in the charter of liberty granted to the town of Friburg. A. D. 1120. If two of the citizens shall quarrel, and one of them shall complain to his superior lord or to his judge, and after commencing the suit, shall be privately reconciled to his adversary, the judge, if he does not approve of this reconciliation, may compel him to go on with his lawsuit, and all who were present at the reconciliation shall forfeit the favour of the superior lord. Historia Zaringo Badensis. Auctor. Jo. Dan. Schoepflinus. Carolsr. 1765, 4to. vol. v. p. 55.

What was the extent of that jurisdiction which those who held fiels possessed originally, we cannot now determine with certainty. It is evident that during the disorders which prevailed in every kingdom of Europe, the great vassals took advantage of the feebleness of their monarchs, and enlarged their jurisdictions to the utmost. As early at the tenth century, the more powerful barons had usurped the right of deciding all causes, whether civil or criminal. They had acquired the High Justice, as well as the Low. Establ.

de St. Louis, lib. i. c. 24, 25. Their sentences were final. and there lay no appeal from them to any superior court. Several striking instances of this are collected by Brussel, Traitè des Fiefs, liv. iii. c. 11, 12, 13. Not satisfied with this, the more potent barons got their territories erected into Regulities, with almost every royal prerogative and jurisdiction. Instances of these were frequent in France. Bruss. In Scotland, where the power of the feudal nobles became exorbitant, they were very numerous. Historical Law Tracts, vol. i. tract vi. Even in England, though the authority of the Norman kings circumscribed the jurisdiction of the barons within more narrow limits than in any other feudal kingdom, several Counties Palatine were erected, into which the king's judges could not enter, and no writ could come in the king's name, until it received the seal of the county-palatine. Spelman. Gloss. voc. Comites Palatini; Blackstone's Commentaries on the Laws of England, vol. iii. p. 78. These lords of regalities had a right to claim or rescue their vassals from the king's judges, if they assumed any jurisdiction over them. Brussel, ubi supra. In the law of Scotland this privilege was termed the right of repledging; and the frequency of it not only interrupted the course of justice, but gave rise to great disorders in the exercise of it. Hist. Law Tracts, ibid. The jurisdiction of the countiespalatine seems to have been productive of like inconveniences in England.

The remedies provided by princes against the bad effects of these usurpations of the nobles, or inconsiderate grants of the crown, were various, and gradually applied. Under Charlemagne and his immediate descendants, the real prerogative still retained great vigour, and the Duces, Comites, and Missi Dominici, the former of whom were ordinary and fixed judges, the latter extraordinary and itinerant judges, in the different provinces of their extensive dominious, exercised a jurisdiction co-ordinate with the barons in some cases, and superior to them in others. Du Cange, voc. Dux, Comites, et Missi. Murat. Antiq. Dissert. viii. & ix. But under the feeble race of monarchs who succeeded them, the authority of the royal judges declined, and the barons acquired that unlimited jurisdiction which has been described. Louis VI. of France attempted to revive the function of the Missi Domici under the title of Juges des Exempts, but the barons were become too powerful to bear such an encroachment on their jurisdiction, and he was obliged to desist from employing them. Henaut Abregè Chron. tom. ii. p. 730.

His successor (as has been observed) had recourse to expedients less alarming. The appeal de defaute de droit, or on account of the refusal of justice, was the first which was attended with any considerable effect. According to the maxims of feudal law, if a baron had not as many vassals as enabled him to try, by their peers, the parties who offered to plead in his court, or if he delayed or refused to proceed in the trial, the cause might be carried, by appeal, to the court of the superior lord of whom the baron held, and tried there. De l'Esprit des Loix, liv. xxviii. c. 28. Du Cange, voc. Defectus Justiciæ. The number of peers or assessors in the courts of barons was frequently very considerable. pears from a criminal trial in the court of the viscount de Lautrec, A. D. 1299, that upwards of two hundred persons were present, and assisted in the trial, and voted in passing judgment. Hist. de Langued. par D. D. de Vic et Vaisette, tom. iv. Preuves, p. 114. But as the right of jurisdiction had been usurped by many inconsiderable barons, they were often unable to hold courts. This gave frequent occasion to such appeals, and rendered the practice familiar. By degrees such appeals began to be made from the courts of the more powerful barons, and it is evident, from a decision recorded by Brussel, that the royal judges were willing to give countenance to any pretext for them. Traitès des Fiefs, tom. i. p. 235. 261. This species of appeal had less effect in abridging the jurisdiction of the nobles, than the appeal on account of the injustice of the sentence. When the fendal monarchs were powerful, and their judges possessed extensive authority, such appeals seem to have been frequent. Capitul. vol. i. p. 175, 180; and they were made in a manner suitable to the rudeness of a simple age. persons aggrieved resorted to the palace of their sovereign, and, with outcries and loud noise, called to him for redress. Capitul. lib. iii. c. 59. Chronic. Lawterbergiense ap. Mencken. Script. German. vol. ii. p. 284. b. In the kingdom of Aragon, the appeals to the Justiza, or supreme judge. were taken in such a form as supposed the appellant to be in immediate danger of death, or of some violent outrage: he rushed into the presence of the judge, crying with a loud voice, Avi, Avi, Fuerza, Fuerza, thus imploring (as it were) the instant interposition of that supreme judge in order to save him. Hier. Blanca Comment. de Rebus Aragon. ap. Script. Hispanic. Pistorii, vol. iii. p. 753. The abolition of the trial by combat facilitated the revival of appeals of this kind. The effects of the subordination

which appeals established, in introducing attention, equity, and consistency of decision into courts of judicature were soon conspicuous; and almost all causes of importance were carried to be finally determined in the king's courts. Brussel, tom. i. 252. Various circumstances which contributed towards the introduction and frequency of such appeals are enumerated De l'Esprit des Loix, liv. xxviii. c. 27. Nothing, however, was of such effect as the attention which monarchs gave to the constitution and dignity of their courts of justice. It was the ancient custom for the feudal monarchs to preside themselves in their courts, and to administer justice in person. Marculf. lib.c. § 25. Murat. Dissert. xxxi. Charlemagne, whilst he was dressing, used to call parties into his presence, and having heard and considered the subject of litigation, gave judgment concerning Eginhartus Vita Caroli magni, cited by Madox Hist. of Exchequer, vol. i. p.91. This trial and decision of causes by the sovereigns themselves could not fail of rendering their courts respectable. St. Louis, who encouraged to the utmost the practice of appeals, revived this ancient custom. and administered justice in person with all the ancient simplicity. "I have often seen the saint," says Joinville, "sit under the shade of an oak, in the wood of Vincennes, when all who had any complaint freely approached him. At other times he gave orders to spread a carpet in a garden, and seating himself upon it, heard the causes that were brought before him." Hist, de St. Louis, p. 13. edit. 1761. Princes of inferior rank, who possessed the right of justice, sometimes dispensed it in person, and presided in their tribunals. Two instances of this occur with respect to the dauphines of Vienne. Hist. de Dauphiné, tom. i. p. 18; tom. ii. p. 257. But as kings and princes could not decide every cause in person, nor bring them all to be determined in the same court, they appointed Baillis, with a right of jurisdiction, in different districts of their kingdom. These possessed powers somewhat similar to those of the ancient Comites. It was towards the end of the twelftle century and beginning of the thirteenth, that this office was first instituted in France. Brussel, liv. ii. c. 35. When the king and a court established in different districts of his dominions, this invited his subjects to have recourse to it. It was the private interest of the Baillis, as well as an object of public policy, to extend their jurisdiction. They took advantage of every defect in the rights of the barons, and of every error in their proceedings, to remove causes out of their courts, and to bring them under

their own cognizance. There was a distinction in the feudal law, and an extremely ancient one, between the high justice and the low. Capitul. 3. A. D. 812. § 4. A. D. 815. § 3. Establ. de St. Louis, liv. i. c. 40. Many barons possessed the latter jurisdiction who had no title to the former. The former included the right of trying crimes of every kind, even the highest: the latter was confined to petty trespasses. This furnished endless pretexts for obstructing, restraining, and reviewing the proceedings in the baron courts. Oldon. ii. 457. § 25. 458. § 29.—A regulation of greater importance succeeded the institution of Baillis. The king's supreme court on parliament was rendered fixed as to the place, and constant as to the times, of its meetings. In France, as well as in the other feudal kingdoms, the king's court of justice was originally ambulatory, followed the person of the monarch, and was held only during some of the great festivals. Philip Augustus, A. D. 1305, rendered it stationary at Paris, and continued its terms during the greater part of the year. Pasquier Rocherches, liv. ii. c. 2 & 3, &c. Ordon. tom. i. 366. § 62. He and his successors vested extensive powers in that court; they granted the members of it several privileges and distinctions which it would be tedious to enumerate. Pasquier, ibid. Velly Hist. de France, tom. vii. p. 307. Persons emineut for integrity and skill in law were appointed judges there. Ibid. By degrees the final decision of all causes of importance was brought into the parliament of Paris, and the other parliaments which administered justice in the king's name, in different provinces of the kingdom. This jurisdiction, however, the parliament of Paris acquired very slowly, and the great vassals of the crown made violent efforts in order to obstruct the attempts of that parliament to extend its authority. Towards the close of the thirtcenth century. Philip the Fair was obliged to prohibit his parliament from taking cognizance of certain appeals brought into it from the courts of the count of Bretagne, and to recognise and respect his right of supreme and final jurisdiction. Memoires pour servir ele Preuves à l'Histoire de Bretagne par Morice, tom.i. p. 1037. 1074. Charles VI. at the end of the following century, was obliged to confirm the rights of the dukes of Bretagne in still more ample form. Ibid. tom. ii. p. 580, 581. So violent was the opposition of the barons to this right of appeal, which they considered as fatal to their privileges and power, that the authors of the Encyclopedic have mentioned several instances in which barous put to death, or mutilated, such persons as ventured

to appeal from the sentences pronounced in their courts to the parliament of Paris, tom, xii. Art. Parlement, p. 25.

The progress of jurisdiction in the other feudal kingdoms was in a great measure similar to that which we have traced in France. In England, the territorial jurisdiction of the barons was both ancient and extensive. Leg. Edw. Conf. No. 5 and 9. After the Norman conquest, it became more strictly feudal: and it is evident from facts recorded in the English history, as well as from the institution of Counties Palatine, which I have already mentioned, that the usurpations of the nobles in England were not less bold or extensive than those of their contemporaries or the continent. The same expedients were employed to circumscribe or abolish those dangerous jurisdictions. William the Conqueror established a constant court in the hall of his palace; from which the four courts now intrusted with the administration of justice in England took their risc. Henry II. divided his kingdom into six circuits, and sent itinerant judges to hold their courts in them at stated seasons. Blackstone's Commentaries on the Laws of England, vol. Justices of the peace were appointed in every county by subsequent monarchs; to whose jurisdiction the people gradually had recourse in many civil causes. The privileges of the Counties Palatine were gradually limited; with respect to some points they were abolished; and the administration of justice was brought into the king's courts. or before judges of his appointment. The several steps taken for this purpose are enumerated in Dalrymple's History of Feudal Property, chap. vii.

In Scotland the usurpations of the nobility were more exorbitant than in any other feudal kingdom. The progress of their encroachments, and the methods taken by the crown to limit or abolish their territorial and independent jurisdictions, both which I had occasion to consider and explain in a former work, differed very little from those of which I have now given the detail. History of

Scotland, vol. i. p. 115.

I should perplex myself and my readers in the labyrinth of German jurisprudence, if F were to attempt to delineate the progress of jurisdiction in the empire, with a minute accuracy. It is sufficient to observe, that the authority which the Aulic council and Imperial chamber now possess, took its rise from the same desire of redressing the abuses of territorial jurisdiction, and was acquired in the same manner that the royal courts attained influence in other.

countries of Europe. All the important facts with respect to both these particulars, may be found in Phil. Datt, de pace publica Imperii, lib. iv. The capital articles are pointed out in Pfeffel Abrege de l'Histoire et Droit publique d'Allemagne, p. 566.581; and in Traité du Droit publique de l'Empire par M. le Coq. de Villeray. The two last treatises are of great authority, having been composed under the eye of M. Schoepflin of Strasburg, one of the ablest public lawyers in Germany.

#### Note XXIV. Sect. I. p. 67. [AA]

It is not easy to fix with precision the period at which ecclesiastics first began to claim exemption from the civil jurisdiction. It is certain, that during the early and purest ages of the church, they pretended to no such immunity. The authority of the civil magistrate extended to all persons, and to all causes. This fact has not only been clearly established by Protestant authors, but is admitted by many Roman Catholics of eminence, and particularly by the writers in defence of the liberties of the Gallican church. There are several original papers published by Muratori, which shew that, in the ninth and tenth centuries, causes of the greatest importance relating to ecclesiastics were still determined by civil judges. Antiq. Ital. vol. v. dissert. Ixx. Proofs of this are produced likewise by M. Houard, Anciennes Loix des François, &c. vol. i. p. 209. Ecclesiastics did not shake off all at once their subjection to civil courts. This privilege, like their other usurpations, was acquired slowly, and step by step. This exemption seems at first to have been merely an act of complaisance, flowing from veneration for their character. Thus from a charter of Charlemagne in favour of the church of Mans, A.D. 796, to which M. l'Abbé de Foy refers in his Notice de Diplomes, tom, i. p. 201, that monarch directs his judges, if any difference should arise between the administrators of the revenues of that church and any person whatever, not to summon the administrators to appear in mallo publico; but first of all to meet with them, and to endeayour to accommodate the difference in an amicable manner. This indulgence was in process of time improved into a legal exemption; which was founded on the same superstitious respect of the laity for the clerical character and function. A remarkable instance of this occurs in a charter of Frederic Barbarossa, A. D. 1172, to the monastery of

Altenburg. He grants them judicium non tantum sanguinolentis plagæ, sed vitæ et mortis; he prohibits any of the royal judges from disturbing their jurisdiction; and the reason which he gives for this ample concession is, nam quorum, ex Dei gratia, ratione divini ministerii onus leve est, et jugum sûave; nos penitus nolumus illos oppressionis contumelià vel manu Laica, fatigari. Mencken Script,

rer. Germ. vol. iii. p. 1067.

It is not necessary for illustrating what is contained in the text, that I should describe the manner in which the code of the canon law was compiled, or shew that the doctrines in it most favourable to the power of the clergy are founded on ignorance, or supported by fraud and forgery. The reader will find a full account of these in Gerard. Van Mastricht. Historia Juris Ecclesiastici, et in Science de Government, par M. Real, tom. vii, c. 1 & 3. § 2, 3, &c. The history of the progress and extent of ecclesiastical jurisdiction, with an account of the arts which the clergy employed in order to draw causes of every kind into the spiritual courts, is no less curious, and would throw great light upon many of the customs and institutions of the dark ages; but it is likewise foreign from the present subject. Du Cange, in his Glossary, voc. Curia Christianitatis, has collected most of the causes with respect to which the clergy arrogated an exclusive jurisdiction, and refers to the authors, or original papers, which confirm his observations. Giannone, in his Civil History of Naples, lib. xix. § 3, has ranged these under proper heads, and scrutinizes the pretensions of the church with his usual boldness and discernment. M. Fleury observes, that the clergy multiplied the pretexts for extending the authority of the spiritual courts with so much boldness, that it was soon in their power to withdraw almost every person and every cause from the jurisdiction of the civil magistrate. Hist, Eccles. tom. xix. Disc. Prelim. 16. But how ill-founded soever the jurisdiction of the clergy may have been, or whatever might be the abuses to which heir manner of exercising it gave rise, the principles and forms of their jurisprudence were far more perfect than that which was known in the civil courts. It seems to be certain, that ecclesiastics never submitted, during any period in the middle ages, to the laws contained in the codes of the barbarous nations, but were governed entirely by the Reman law. They regulated all their transactions by such of its maxims as were preserved by tradition, or were contained in the Theodosian code.

and other books extant among them. This we learn from a custom which prevailed universally in those ages. Every person was permitted to choose; among the various codes of law then in force, that to which he was willing to conform. In any transaction of importance, it was usual for the persons contracting to mention the law to which they submitted, that it might be known how any controversy that should arise between them was to be decided. Innumerable proofs of this occur in the charters of the middle ages. But the clergy considered it as such a valuable privilege of their order to be governed by the Roman law. that when any person entered into holy orders, it was usual for him to renounce the code of laws to which he had been formerly subject, and to declare that he now submitted to the Roman law. Constat me Johannem clericum, filium quondam Verandi, qui professus sum, ex natione mea, lege vivere Langobardorum, sed tamen, pro honore ecclesiastico, lege nunc videor vivere Romana. Charta, A.D. 1072. Farulfus presbyter qui professus sum, more sacerdotii mei, lege vivere Romana. Charta, A.D. 1075. Muratori Antichita Estensi. vol. i. p. 78. See likewise Houard Ancienues Loix des François, &c. vol. i. p. 203.

The code of the canon law began to be compiled early in the ninth century. Mem. de l'Acad. des Inscript. tom. xviii. p. 346, &c. It was above two centuries after that before any collection was made of those customs which were the rule of judgments in the courts of the barons: Spiritual judges decided, of course, according to written and known laws; lay judges, left without any fixed guide. were directed by loose traditionary customs. But, besides this general advantage of the canon law, its forms and principles were more consonant to reason, and more favourable to the equitable decision of every point in controversy, than those which prevailed in lay courts. It appears, from Notes XXI. and XXIII., concerning private wars, and the trial by combat, that the whole spirit of ecclesiastical jurisprudence was adverse to those sanguinary customs which were destructive of justice; and the whole force of ecclesiastical authority was exerted to abolish them, and to substitute trials by law and evidence in their room. Almost all the forms in lay courts, which contribute to establish, and continue to preserve order in judicial proceedings, are borrowed from the canon law. Fleury Instit. du Droit canon, part iii. c. 6. p. 52. St. Louis in his Establissemens, confirms many of his new regulations, concerning property and the administration of justice, by the authority of the canon law, from which he borrowed them, Thus, for instance, the first hint of attaching moveables. for the recovery of a debt, was taken from the canon law. Estab. liv. ii. c. 21 and 40. And likewise the cessio bonorum. by a person who was insolvent. Ibid. In the same manner he established new regulations with respect to the effects of persons dying intestate, liv. i. c. 89. These, and many other salutary regulations, the canonists had borrowed from the Roman law. Many other examples might be produced. of more perfect jurisprudence in the canon law than was known in lay courts. For that reason, it was deemed a high privilege to be subject to ecclesiastical jurisdiction. Among the many immunities by which men were allured to engage in the dangerous expeditions for the recovery of the Holy Land, one of the most considerable was the declaring such as took the cross to be subject only to the spiritual courts, and to the rules of decision observed in See Note XIII. and Du Cange, voc. Crucis Privithem. legia.

# Note XXV. Sect. I. p. 69. [BB]

THE rapidity with which the knowledge and study of the Roman law spread over Europe is amazing. The copy of the Pandects was found at Amalphi, A. D. 1137. Irnerius opened a college of civil law at Bologna a few years after. Giann. Hist. book xi. c. 2. It began to be taught as a part of academical learning in different parts of France before the middle of the century. Vaccarius gave lectures on the civil law at Oxford as early as the year 1147. A regular system of feudal law, formed plainly in imitation of the Roman code, was composed by two Milanese lawyers about the year 1150. Gratian published the code of canon law, with large additions and emendations, about the same The earliest collection of those customs, which served as the rules of decision in the courts of justice, is They were compiled, as the the Assises de Jerusalem. preamble informs us, in the year 1099, and are called Jus Consuetudinarium quo regebatur regnum orientale. Willerm. Tyr. lib. xix. c. 2. But peculiar circumstances gave occasion to this early compilation. The victorious crusaders settled as a colony in a foreign country, and adventurers from all the different nations of Europe composed this new society. It was necessary on that account to ascertain the laws and customs which were to regulate the transactions of business, and the administration of justice among them. But in no country of Europe was there, at that time, any collection of customs, nor had any attempt been made to render law fixed. The first undertaking of that kind was by Glanville, lord chief-justice of England, in his Tractatus de Legibus et Consuetudinibus Angliæ, composed about the year 1181. The Regiam Majestatem in Scotland, ascribed to David I., seems to be an imitation, and a servile one of Glanville. Several Scottish antiquaries, under the influence of that pious credulity, which disposes men to assent, without hesitation, to whatever they deem for the honour of their native country, contend zealously, that the Regiam Majestatem is a production prior to the treatise of Glanville; and have brought themselves to believe, that a nation, in a superior state of improvement, borrowed its laws and institutions from one considerably less advanced in its political progress. The internal evidence (were it my province to examine it) by which this theory might be refuted, is, in my opinion, decisive. The external circumstances which have seduced Scottish authors into this mistake, have been explained with so much precision and candour by Sir David Dalrymple, in his examination of some of the arguments for the high antiquity of Regiam Majestatem, Edin. 1769, 4to, that it is to be hoped the controversy will not be again revived. Pierre de Fontaines, who tells us, that he was the first who had attempted such a work in France, composed his Conseil, which contains an account of the customs of the country of Vermandois, in the reign of St. Louis, which began A.D. 1226. Beaumanoir, the author of the Coustumes de Beauvoisis, lived about the same time. The Establissemens of St. Louis, containing a large collection of the customs which prevailed within the royal domains, were published by the authority of that monarch. As soon as men became acquainted with the advantages of having written customs and laws, to which they could have recourse on every occasion, the practice of collecting them became common. Charles VII. of France, by an ordonnance A. D. 1453, appointed the customary lows in every province of France to be collected and arranged. Velley and Villaret, Hist. tom. xvi. p. 113. His successor, Louis XI., renewed the injunction. But this salutary undertaking hath never been fully executed, and the jurisprudence of the French nation remains more obscure and uncertain than it would have been if these prudent regulations of their monarchs had taken effect. A mode of judicial determination was established in the middle ages, which affords the clearest proof that judges, while they had no other rule to direct their decrees but unwritten and traditionary customs, were often at a loss how to find out the facts and principles according to which they were bound to decide. They were obliged, in dubious cases, to call a certain number of old men, and to lay the case before them, that they might inform them what was the practice or custom with regard to the point. This was called Enqueste par tourbe. Du Cange, voc. The effects of the revival of the Roman jurisprudence have been explained by M. de Montesquieu, liv. xxviii, c. 42, and by Mr. Hume, Hist. of England, vol. ii. p. 441. I have adopted many of their ideas. Who can pretend to review any subject which such writers have considered, without receiving from them light and information? At the same time, I am convinced that the knowledge of the Roman law was not so entirely lost in Europe during the middle ages, as is commonly believed. subject does not require me to examine this point. Many striking facts with regard to it are collected by Donato Antonio d'Asti Dall' Uso e autorita della regione civilò nelle provincie dell' Imperio Occidentale. Nap. 1751. 2 vols. 8vo.

That the civil law is intimately connected with the municipal jurisprudence in several countries of Europe, is a fact so well known that it needs no illustration. Even in England, where the common law is supposed to form a system perfectly distinct from the Roman code, and although such as apply in that country to the study of the common law boast of this distinction with some degree of affectation, it is evident that many of the ideas and maxims of the civil law are incorporated into the English jurisprudence. This is well illustrated by the ingenious and learned author of Observations on the Statutes, chiefly the more ancient, 3d edit, p. 76. &c.

# Note XXVI. Sect. I. p. 70. [CC]

THE whole history of the middle ages makes it evident, that war was the sole profession of gentlemen, and almost the one; object attended to in their education. Even after some change in manners began to take place, and the civil arts of life had acquired some seputation, the ancient ideas with respect to the accomplishments necessary for a person

of noble birth, continued long in force. In the Memoires de Fleuranges, p. 9, &c. we have an account of the youthful exercises and occupations of Francis I. and they were altogether martial and athletic. That father of letters owed his relish for them, not to education, but to his own good sense and good taste. The manners of the superior order of ecclesiastics during the middle ages furnish the strongest proof that, in some instances, the distinction of professions was not completely ascertained in Europe. The functions and character of the clergy are obviously very different from those of laymen; and among the inferior orders of churchmen, this constituted a distinct character separate from that of other citizens. But the dignified ecclesiastics, who were frequently of noble birth, were above such a distinction; they retained the idea of what belonged to them as gentlemen, and in spite of the decrees of popes, or the canons of councils, they bore arms, led their vassals to the field, and fought at their head in battle. Among them the priesthood was scarcely a separate profession; the military accomplishments, which they thought essential to them as gentlemen, were cultivated; the theological science, and pacific virtues suitable to their spiritual function, were neglected and despised.

As soon as the science of law became a laborious study. and the practice of it a separate profession, such persons as rose to eminence in it obtained honours which had formerly been appropriated to soldiers. Knighthood was the most illustrious mark of distinction during several ages, and conferred privileges to which rank or birth alone were not entitled. To this high dignity persons eminent for their knowledge of law were advanced, and were thereby placed on a level with those whom their military talents had rendered conspicuous. Miles Justitiæ, Miles Literatus became common titles. Matthew Paris mentions such knights as early as A.D. 1251. If a judge attained a certain rank in the courts of justice, that alone gave him a right to the honour of knighthood. Pasquier Recherches, liv. xi. c. 16. p. 130. Dissertations Historiques sur la Chevalerie par Honorè de Sainte Marie, p. 164, &c. A profession that led to offices which ennobled the persons who held them, grew into credit, and the people of Europe became accustomed to see men rise to eminence by civil as well as military talents.

## Note XXVII. Sect. I. p. 73. [DD]

THE chief intention of these notes was to bring at once under the view of my readers such facts and circumstances as tend to illustrate or confirm what is contained in that part of the hictory to which they refer. When these lav scattered in many different authors, and were taken from books not generally known, or which many of my readers might find it disagrecable to consult, I thought it would be of advantage to collect them together. But when every thing necessary for the proof or illustration of my narrative or reasoning may be found in any one book which is generally known, or descrees to be so, I shall satisfy myself with referring to it. This is the case with respect to chivalry. Almost every fact which I have mentioned in the text. together with many other curious and instructive particulars concerning this singular institution, may be found in Memoires sur l'Ancienne Chevalerie considerée comme une Establissement Politique et Militaire, par M. de la Curne de St. Palave.

## Note XXVIII. Sect. I. p. 77. [EE]

THE subject of my inquiries does not call me to write a history of the progress of science. The facts and observations which I have produced, are sufficient to illustrate the effects of its progress upon manners and the state of society. While science was altogether extinct in the western parts of Europe, it was cultivated in Constantinople and other parts of the Grecian empire. But the subtile genius of the Greeks turned almost entirely to theological disputation. The Latins borrowed that spirit from them, and many of the controversies which still occupy and divide theologians, took their rise among the Greeks, from whom the other Europeans derived a considerable part of their knowledge. See the testimony of Æneas Sylvius ap. Conringium de Antiq. Academicis, p. 43. Histoire Literaire de France, tom. vii. p. 113, &c.; tom. ix. p. 151, &c. Soon after the empire of the Caliphs was established in the East, some illustrious princes arose among them, who encouraged science. But when the Arabians turned their attention to the literature cultivated by the ancient Greeks and Romans, the chaste and correct taste of their works of genius appeared frigid and unanimated to a people of a more warm imagina-

tion. Though they could not admire the poets and historians of Greece or of Rome, they were sensible of the merit of their philosophers. The operations of the intellect are more fixed and uniform than those of the fancy or taste. Truth makes an impression nearly the same in every place: the ideas of what is beautiful, elegant, or sublime, vary in different climates. The Arabians, though they neglected Homer, translated the most eminent of the Greek philosophers into their own language; and, guided by their precepts and discoveries, applied themselves with great ardour to the study of geometry, astronomy, medicine, dialectics, and metaphysics. In the three former they made considerable and useful improvements, which have contributed not a little to advance those sciences to that high degree of perfection which they have attained. In the two latter, they chose Aristotle for their guide, and refining on the subtle and distinguishing spirit which characterizes his philosophy, they rendered it in a great degree frivolous or unintelligible. The schools established in the East for teaching and cultivating these sciences were in high reputation. They communicated their love of science to their countrymen, who conquered Africa and Spain: and the schools instituted there were little inferior in fame to those in the East. Many of the persons who distinguished themselves by their proficiency in science during the twelfth and thirteenth centuries, were educated among the Arabians. Bruckerus collects many instances of this, Histor. Philos. vol. iii. p. 681, &c. Almost all the men eminent for science during several centuries, if they did not resort in person to the schools in Africa and Spain, were instructed in the philosophy of the Arabians. The first knowledge of the Aristotelian philosophy in the middle ages was acquired by translations of Aristotle's works out of the Arabic. Arabian commentators were deemed the most skilful and authentic guides in the study of his system. Conring. Antiq. Acad. Diss. iii. p. 95, &c. Supplem. p. 241, &c. Murat. Antiquit. Ital. vol. iii. p. 932, &c. From them the schoolmen derived the genius and principles of their philosophy, which contributed so much to retard the progress of true science.

The establishment of colleges or universities is a remarkable era in literary history. The schools in cathedres and monasteries confined themselves chiefly to the teaching of grammar. There were only one or two masters employed in that office. But in colleges, professors were appointed

to teach all the different parts of science. The course or order of education was fixed. The time that ought to be allotted to the study of each science was ascertained. A regular form of trying the proficiency of students were prescribed; and academical titles and honours were conferred on such as acquitted themselves with approbation. A good account of the origin and nature of these is given by Seb. Bacmeisterus Antiquitates Rostochienses, sive, Historia Urbis et Academiæ Rostoch, ap. Monumenta inedita Rer. Germ. per. E. J. de Westphalen, vol. iii. p. 781. Lips. 1743. The first obscure mention of these academical degrees in the university of Paris (from which the other universities in Europe have borrowed most of their customs and institutions) occurs A. D. 1215. Crevier. Hist. de l'Univ. de Paris, tom. i. p. 296, &c. They were completely established A. D. 1231. Ibid. 248. It is unnecessary to enumerate the several privileges to which bachelors, masters, and doctors, were entitled. One circumstance is sufficient to demonstrate the high degree of estimation in which they were held. Doctors in the different faculties contended with knights for precedence, and the dispute was terminated in many instances by advancing the former to the dignity of knighthood, the high prerogatives of which I have mentioned. It was even asserted, that a doctor had a right to that title without creation. Bartolus taughtdoctorem actualiter regentem in jure civili per decennium effici militem ipso facto. Honoré de St. Marie Dissert, p. 165. This was called Chevalerie de Lectures, and the persons advanced to that dignity, Milites Clerici. These new establishments for education, together with the extraordinary honours conferred on learned men, greatly increased the number of scholars. In the year 1262, there were ten thousand students in the university of Bologna; and it appears from the history of that university, that law was the only science taught in it at that time. In the year 1340, there were thirty thousand in the university of Oxford. Speed's Chron. ap. Anderson's Chronol. Deduction of Commerce, vol. i. p. 172. In the same century, ten thousand persons voted in a question agitated in the university of Paris; and as graduates alone were admitted to that privilege, the number of students must have been very great. Velle Hist. de France, tom. xi. p. 147. There were indeed few universities in Europe at that time; but such a number of students may nevertheless be produced as a proof of the extraordinary ardour with which men applied

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to the study of science in those ages; it shows likewise that they already began to consider other professions beside that of a soldier as honourable and useful.

### Note XXIX. Sect. I. p. 78. [FF]

The great variety of subjects which I have endeavoured to illustrate, and the extent of this upon which I now enter, will justify my adopting the words of M. de Montesquieu, when he begins to treat of commerce. "The subject which follows would require to be discussed more at large; but the nature of this work does not permit it. I wish to glide on a tranquil stream; but I am hurried along by a torrent."

Many proofs occur in history of the little intercourse between nations during the middle ages. Towards the close of the tenth century, count Bouchard, intending to found a monastery at St. Maur des l'osses, near Paris, applied to an fabbot of Clogny in Burgundy, famous for his sanctity, intreating him to conduct the monks thither. The language in which he addressed that holy man is singular: he tells him, that he had undertaken the labour of such a great journey; that he was fatigued with the length of it, therefore hoped to obtain his request, and that his journey into such a distant country should not be in vain. The answer of the abbot is still more extraordinary: he refused to comply with his desire, as it would be extremely fatiguing to go along with him into a strange and unknown region. Vita Burchardi Venerabilis Comitis ap. Bouquet Rec. des Hist. vol. x. p. 351. Even so late as the beginning of the twelfth century, the monks of Ferrieres in the diocess of Sens, did not know that there was such a city as Tournay in Flanders; and the monks of St. Martin of Tournay, were equally unacquainted with the situation of Ferrieres. A transaction in which they were both concerned made it necessary for them to have some intercourse. The mutual interest of both monasteries prompted each to find out the situation of the other. After a long search, which is particularly described, the discovery was made by accident. Herimannus Abbas de Restauratione St. Martini Tornacensis ap. Dacher. Spicel. vol. xii. p. 400. The ignorance of the middle ages with respect to the situation and geography of remote countries was still more remarkable. The most ancient geographical chart which now remains as a monument of the state of that science in Europe during

the middle ages, is found in a manuscript of the Chronique de St. Denys. There the three parts of the earth then known are so represented, that Jerusalem is placed in the middle of the globe, and Alexandria appears to be as near to it as Nazareth. Mem. de l'Acad. des Belles Lettres. tom. xvi. p. 185. There seems to have been no inns or houses of entertainment for the reception of travellers during the middle ages. Murat. Antiq. Ital. vol. iii. p. 581, &c. This is a proof of the little intercourse which took place between different nations. Among people whose manners are simple, and who are seldom visited by strangers, hospitality is a virtue of the first rank. This duty of hospitality was so necessary in that state of society which took place during the middle ages, that it was not considered as one of those virtues which men may practise or not, according to the temper of their minds and the generosity of their hearts. Hospitality was enforced by statutes, and such as neglected this duty were liable to punishment. Quicunque hospiti venienti lectum, aut focum negaverit, trium solidorum inlatione mulctetur? Leg. Burgund. tit. xxxviii. § 1. Si quis homini aliquo pergenti in itinere mansionem vetaverit sexaginta solidos componat in publico. Capitul, lib. vi. 6 82. This increase of the penalty, at a period so long after that in which the laws of the Burgundians were published, and when the state of society was much improved, is very remarkable. Other laws of the same purport are collected by Jo. Fred. Polac. Systema Jurisprud. manicæ, Lips. 1733, p. 75. The laws of the Slavi were more rigorous than any that he mentions; they ordained, "that the moveables of an inhospitable person should be They were even so soliconfiscated, and his house burnt. citous for the entertainment of strangers, that they permitted the landlord to steal for the support of his guest," Quod noctu furatus fueris, cras appone, hospitibus. Rerum Mecleburgicar, lib. viii. a Mat. Jo. Beehr. Lips. 1751, p. 50. In consequence of these laws, or of the state of society which made it proper to enact them, hospitality abounded while the intercourse among men was inconsiderable, and secured the stranger a kind seception under every roof where he chose to take shelter. This, too, proves clearly, that the intercourse among men was rare, for as soon as this became frequent, what was a pleasure became a burden, and the entertaining of travellers was converted into a branch of commerce.

But the laws of the middle ages afford a proof still more

convincing of the small intercourse between different na-The genius of the feudal system, as well as the spirit of jealousy which always accompanies ignorance, concurred in discouraging strangers from settling in any new country. If a person removed from one province in a kingdom to another, he was bound within a year and a day to acknowledge himself the vassal of the baron in whose estate he settled; if he neglected to do so, he became liable to a penalty; and, if at his death, he neglected to leave a certain legacy to the baron within whose territory he had resided. all his goods were confiscated. The hardships imposed on foreigners settling in a country, were still more intolerable. In more early times, the superior lord of any territory in which a foreigner settled, might seize his person and reduce him to servitude. Very striking instances of this occur in the history of the middle ages. The cruel depredations of the Normans in the ninth century, obliged many inhabitants of the maritime provinces of France to fly into the interior parts of the kingdom. But instead of being received with that humanity to which their wretched condition entitled them, they were reduced to a state of servitude. Both the civil and ecclesiastical powers found it necessary to interpose, in order to put a stop to this barbarous practice. Potgiesser. de Statu Servor. lib. i. c. 1. § 16. In other countries, the laws permitted the inhabitants of the maritime provinces to reduce such as were shipwrecked on their coast to servitude. Ibid. § 17. This barbarous custom prevailed in many countries of Europe. The practice of seizing the goods of persons who had been shipwrecked, and of confiscating them as the property of the lord on whose manor they were thrown, seems to have been universal. Westphalen Monum. incdita Rer. Germ. vol. iv. p. 907. &c. et Du Cange, voc. Laganum, Beehr, Rer. Macleb. lib. p. 512. Among the aucient Welsh, three sorts of persons. a madman, a stranger, and a leper, might be killed with impunity. Leges Hoel Dda, quoted in Observat. on the Statutes, chiefly the more ancient p. 22. M. de Lauriere produces several ancient deeds which prove, that in different provinces of France strangers became the slaves of the lord on whose lands they settled. Glossaire du Droit François, Art. Aubaine, p. 92. Beaumanoir says, "that there are several places in France, in which, if a granger fixes his residence for a year and a day, he becomes the slave of the lord of the martor." Const. de Beav. ch. 45. p. 254. As a practice so contrary to humanity could not

subsist long, the superior lords found it necessary to rest satisfied, instead of enslaving aliens, with levying certain annual taxes upon them, or imposing upon them some extraordinary duties or services. But when any stranger died, he could not convey his effects by will; and all his real as well as personal estate fell to the king, or to the lord of the barony, to the exclusion of his natural heirs. This is termed in France Droit D'Aubaine. Laurier. Ordon. tom. i. p. 15. Brussel. tom. ii. p. 944. Du Cange, voc. Albani. Pasquier Recherches, p. 367. This practice of confiscating the effects of strangers upon their death was very ancient. It is mentioned, though very obscurely, in a law of Charlemagne, A. D. 813. Capitul. Baluz. p. 507. § 5. Not only persons who were born in a foreign country were subject to the Droit D'Aubaine, but in some countries such as removed from one diocess to another, or from the lands of one baron to another. Brussel. vol. ii. p. 947. 949. It is hardly possible to conceive any law more unfavourable to the intercourse between nations. Something similar to it, however, may be found in the ancient laws of every kingdom in Europe. With respect to Italy, see Murat. Ant. vol. ii. p. 14. As nations advanced in improvement this practice was gradually abolished. is no small disgrace to the French jurisprudence, that this barbarous, inhospitable custom should have so long remained among a people so highly civilized.

The confusion and outrage which abounded under a feeble form of government, incapable of framing or executing salutary laws, rendered the communication between the different provinces of the same kingdom extremely dangerous. It appears from a letter of Lupus, abbot of Ferrieres, in the ninth century, that the highways were so much infested by banditti, that it was necessary for travellers to form themselves into companies or caravans, that they might be safe from the assault of robbers. Bouquet Recueil des Hist. vol. vii. p. 515. The numerous regulations published by Charles the Beld in the same century, discover the frequency of these disorders; and such acts of violence were become so common, that by many they were hardly considered as criminal. For this reason, the inferior judges, called Centenarii, were required to take an oath, that they would lieither commit any robbery themselves, nor protect such as were guilty of that crime. Capitul. edit. Baluz. vol. ii. p. 63. 68. The historians of the ninth and tenth centuries give pathetic descriptions of these disorders. Some re-

markable passages to this purpose are collected by Mat. Jo. Bechr. Rer. Mccleb. lib. viii. p. 603. They became so frequent and audacious, that the authority of the civil magistrate was unable to repress them. The ecclesiastical jurisdiction was called in to aid it. Councils were held with great solemnity, the bodies of the saints were brought thither, and, in presence of their sacred relics, anathemas were denounced against robbers, and other violators of the public peace. Bouquet Recueil des Hist. tom. x. p. 360. One of these forms of excommunication. 431. 536. issued A.D. 988, is still preserved, and is so singular, and composed with eloquence of such a peculiar kind, that it will not perhaps be deemed unworthy of a place here. After the usual introduction, and mentioning the outrage which gave occasion to the anathema, it runs thus: "Obtenebrescant oculi vestri, qui concupiverunt; arescant manus, quæ rapuerunt, debilitentur omnia membra, quæ Semper laboretis, nec requiem inveniatis, adjuverunt. fructuque vestri laboris prevemini. Formidetis, et paveatis. à facie persequentis, et non persequentis hostis, ut tabescendo deficiatis. Sit portio vestra cum Juda traditore Domini, in terra mortis et tenebrarum: donce corda vestra ad satisfactionem plenam convertantur.—Ne cessant a vobis hæ maledictiones, scelerum vestrorum persecutrices, quamdin permanebitis in peccato pervasionis. Amen. Fiat. Fiat." Bouquet. ibid. p. 517.

## Note XXX. Sect. I. p. 82. [GG]

WITH respect to the progress of commerce which I have described, p. 77, &c. it may be observed that the Italian states carried on some commerce with the cities of the Greek empire, as early as the age of Charlemagne, and imported into their own country the rich commodities of the East. Murat. Antiq. Ital. vol. ii. p. 882. In the tenth century, the Venetians had opened a trade with Alexandria in Egypt. Ibid. The inhabitants of Amalphi and Pisa had likewise extended their trade to the same ports. Murat, Ib. p. 884, 885. The effects of the crusades in increasing the wealth and commerce of the Italian states, and particularly that which they carried on with the East, I have explained, page 34th of this volume. They not only imported the Indian commodities from the East, but established manufactures of curious fabric in their own country. Several of these are enumerated by Muratori in his Dissertations concerning the arts and the weaving of the middle ages. Antiq. Ital. vol. ii. p. 349. 399. They made great progress, particularly in the manufacture of silk, which had long been peculiar to the eastern provinces of Asia. Silk stuffs were of such high price in ancient Rome, that only a few persons of the first rank were able to purchase them. Under Aurelian, A.D. 270, a pound of silk was equal in value to a pound of gold. Absit ut auro fila pensentur. Libra enim auri tunc libra serici fuit. Vopiscus in Aureliano. Justinian, in the sixth century, introduced the art of rearing silk-worms into Greece, which rendered the commodity somewhat more plentiful, though still it was of such great value, as to remain an article of luxury or magnificence, reserved only for persons of the first order, or for public solemnities. Roger I. king of Sicily, about the year 1130, carried off a number of artificers in the silk trade from Athens, and settling them in Palermo, introduced the culture of silk into his kingdom, from which it was communicated to other parts of Italy. Gianon. Hist. of Naples, b. xi. c. 7. This seems to have rendered silk so common, that, about the middle of the fourteenth century, a thousand citizens of Genoa appeared in one procession clad in silk robes. Sugar is likewise a production of the East. Some plants of the sugar-cane were brought from Asia; and the first attempt to cultivate them in Sicily was made about the middle of the twelfth century. From thence they were transplanted into the southern provinces of Spain. From Spain they were carried to the Canary and Madeira Isles, and at length into the New World. Ludovico Guicciardini, in enumerating the goods imported into Antwerp about the year 1500, mentions the sugar which they received from Spain and Portugal as a considerable article. He describes that sugar as the product of the Madeira and Canary Islands. Descritt. de Paesi Bassi, p. 180, 181. The sugar-cane was introduced into the West Indies before that time, but the cultivation of it was not so improved, or so extensive as to furnish an article of much consequence in commerce. In the middle ages, though sugar was not raised in such quantities, or employed for so many purposes, as to become one of the common necessaries of life, it appears to have been a considerable article in the commerce of the Italian states.

These various commodities with which the Italians furnished the other nations of Europe, procured them a favourable reception in every kingdom. They were esta-

blished in France in the thirteenth century with most extensive immunities. They not only obtained every indulgence favourable to their commerce, but personal rights and privileges were granted to them, which the natives of the kingdom did not enjoy. Ordonnances, tom, iv. p. 668. By a special proviso, they were exempted from the Droit d'Aubaine. Ibid. p. 670. As the Lombards (a name frequently given to all Italian merchants in many parts of Europe) engrossed the trade of every kingdom in which they settled, they became masters of its cash. Money of course was in their hands not only a sign of the value of other commodities, but became an object of commerce itself. They dealt largely as bankers. In an ordonnance, A.D. 1295, we find them stiled mercatores and campsores. They carried on this as well as other branches of their commerce with somewhat of that rapacious spirit which is natural to monopolizers who are not restrained by the competition of rival traders. An absurd opinion, which prevailed in the middle ages, was, however, in some measure, the cause of their exorbitant demands, and may be pleaded in apology for them. Trade cannot be carried on with advantage, unless the persons who lend a sum of money are allowed a certain premium for the use of it, as a compensation for the risk which they run in permitting another to traffic with their stock. This premium is fixed by law in all commercial countries, and is called the legal interest of money. But the fathers of the church had preposterously applied the prohibitions of usury in Scripture to the payment of legal interest, and condemned it as a sin. schoolmen, misled by Aristotle, whose sentiments they followed implicitly, and without examination, adopted the same error, and enforced it. Blackstone's Commentaries on the Laws of England, vol. ii. p. 455. Thus the Lombards found themselves engaged in a traffic which was every where deemed criminal and odious. They were liable to punishment if detected. They were not satisfied. therefore, with that moderate premium, which they might have claimed if their trade had been open and authorized by law. They exacted a sum proportional to the danger and infamy of a discovery. Accordingly, we find that it was usual for them to demand twenty per cent. for the use of money in the thirteenth century. Murat. Antin. Ital. vol. i. p. 893. About the beginning of that century, the countess of Flanders was obliged to borrow money in order to pay her husband's ransom. She procured the sum requisite either from Italian merchants or from Jews. The

lowest interest which she paid to them was above twenty per cent. and some of them exacted near thirty. Martene and Durand, Thesaur. Anecdotorum, vol. i. p. 886. In the fourteenth century, A.D. 1311, Philip IV. fixed the interest which might be legally exacted in the affairs of Champagne at twenty per cent. Ordon. tom. i. p. 484. The interest of money in Aragon was somewhat lower. James I., A. D. 1242, fixed it by law at eighteen per cent. Petr. de Marca. Marca sive Limes Hispan. app. 1433. As late as the year 1490, it appears that the interest of money in Placentia was at the rate of forty per cent. This is the more extraordinary, because at that time the commerce of the Italian states was become considerable. Memorie Storiche de Piacenza, tom. viii. p. 104. Piac. 1760. It appears from Lud. Guicciardini, that Charles V. had fixed the rate of interest in his dominions in the Low Countries at twelve per cent, and at the time when he wrote, about the year 1560, it was not uncommon to exact more than that sum. He complains of this as exorbitant. and points out its bad effects both on agriculture and commerce. Descritt. di Pæsi Bassi, p. 172. This high interest of money is alone a proof that the profits on commerce were exorbitant; and that it was not carried on to great extent.—The Lombards were likewise established in England in the thirteenth century, and a considerable street in the city of London still bears their name. They enjoyed great privileges, and carried on an extensive commerce. particularly as bankers. See Anderson's Chronol. Deduction, vol. i. p. 137, 160, 204, 231, where the statutes or other authorities which confirm this are quoted. But the chief mart for Italian commodities was at Bruges. Navigation was then so imperfect, that to sail from any port in the Baltic, and to return again, was a voyage too great to be performed in one summer. For that reason, a magazine or storehouse half-way between the commercial cities in the north, and those in Italy, became necessary. Bruges was pitched upon as the most convenient station. That choice introduced vast wealth into the Low Countries. Bruges was at once the staple for English wool: for the woollen and linen manufactures of the Netherlands; for the naval stores and other bulky commodities of the North; and for the Indian commodities, as well as domestic productions imported by the Italian states. The extent of its commerce in Indian goods with Venice alone, appears from one fact. In the year 1318, five Venetian galeasses laden with Indian commodities arrived at Bruges, in order to

dispose of their cargoes at the fair. These galeasses were vessels of very considerable burden. L. Guic. Descritt. de Pæsi Bassi, p. 174. Bruges was the greatest emporium in all Europe. Many proofs of this occur in the historians and records of the thirteenth and fourteenth centuries. But, instead of multiplying quotations, I shall refer my readers to Anderson, vol. i. p. 12. 137. 213. 246, &c. The nature of this work prevents me from entering into any more minute detail, but there are some detached facts, which give a high idea of the wealth both of the Flemish and Italian commercial states. The duke of Brabant contracted his daughter to the Black, Prince, son of Edward III. of England, A. D. 1339, and gave her a portion which we may reckon to be of equal value with three hundred thousand pounds of our present money. Rymer's Fœdera, vol v. p. 113. John Galeazzo Visconti duke of Milan concluded a treaty of marriage between his daughter and Lionel duke of Clarence, Edward's third son, A. D. 1367, and granted her a portion equal to two hundred thousand pounds of our present money. Rymer's Foeder, vol. vi. p. 547. These exorbitant sums, so far exceeding what was then granted by the most powerful monarchs, and which appear extraordinary even in the present age, when the wealth of Europe is so much increased, must have arisen from the riches which flowed into those countries from their extensive and lucrative commerce. The first source of wealth to the towns situated on the Baltic sca seems to have been the herringfishery, the shoals of herrings frequenting at that time the coasts of Sweden and Denmark, in the same manner as they now resort to the British coasts. The effects of this fishery are thus described by an author of the thirteenth century. The Danes, says he, who were formerly clad in the poor garb of sailors, are now clothed in scarlet, purple, and fine linen. For they abound with wealth flowing from their annual fishery on the coast of Schonen; so that all nations resort to them, bringing their gold, silver, and precious commodities, that they may purchase harrings, which the divine bounty bestows upon them. Arnoldus Lubecensis ap. Conring. de Urbib. German. § 87.

The Hanseatic League is the most powerful commercial confederacy known in history. Its origin towards the close of the twelfth century, and the objects of its union, are described by Knipschild, Tractatus Historico-Politico Juridicus de Juribus Civitat. Imperalib. i. cap. 4. Anderson has mentioned the chief facts with respect to their commercial

progress, the extent of the privileges which they obtained in different countries, their successful wars with several monarchs, as well as the spirit and zeal with which they contended for those liberties and rights, without which it is impossible to carry on commerce to advantage. The vigorous efforts of a society of merchants, attentive only to commercial objects, could not fail of diffusing new and more liberal ideas concerning justice and order in every country of Europe where they settled.

In England, the progress of commerce was extremely slow; and the causes of this are obvious. During the Saxon heptarchy, England, split into many petty kingdoms, which were perpetually at variance with each other; exposed to the fierce incursions of the Danes, and other northern pirates; and sunk in barbarity and ignorance, was in no condition to cultivate commerce, or to pursue any system of useful and salutary policy. When a better prospect began to open by the union of the kingdom under one monarch. the Norman conquest took place. This occasioned such a violent shock, as well as such a sudden and total revolution of property, that the nation did not recover from it during several reigns. By the time that the constitution began to acquire some stability, and the English had so incorporated with their conquerors as to become one people, the nation engaged with no less ardour than imprudence in support of the pretensions of their sovereigns to the crown of France. and long wasted its vigour and genius in its wild efforts to conquer that kingdom. When, by ill success and repeated disappointments, a period was at last put to this fatal frenzy. and the nation, beginning to enjoy some repose, had leisure to breathe and to gather new strength, the destructive wars between the houses of York and Lancaster broke out, and involved the kingdom in the worst of all calamities. Thus, besides the common obstructions of commerce, occasioned by the nature of the feudal government, and the state of manners during the middle ages, its progress in England was retarded by peculiar causes. Such a succession of events adverse to the commercial spirit was sufficient to have checked its growth, although every other circumstance had favoured it. The English were accordingly one of the last nations in Europe who availed themselves of those commercia advantages which were natural or peculiar to their country. Before the reign of Edward III. all the wool of England, except a small quantity wrought into coarse cloths for home consumption, was sold to the Flemings or

Lombards, and manufactured by them. Though Edward. A. D. 1326, began to allure some of the Flemish weavers to settle in England, it was long before the English were capable of fabricating cloth for foreign markets, and the export of unwrought wool still continued to be the chief article of their commerce. Anderson, passim.—All foreign commodities were brought into England by the Lombards or Hanscatic merchants. The English ports were frequented by ships both from the north and south of Europe, and they tamely allowed foreigners to reap all the profits arising from the supply of their wants. The first commercial treaty of England on record, is that with Haquin, king of Norway, A.D. 1217. Anders. vol. i. p. 108. But the English did not venture to trade in their own ships to the Baltic until the beginning of the fourteenth century. Ibid. p. 151. It was after the middle of the fifteenth, before they sent any ship into the Mediterranean. Ibid. p. 177. Nor was it long before this period that their vessels began to visit the ports of Spain or Portugal. But though I have pointed out the slow progress of the English commerce as a fact little attended to, and yet meriting consideration; the concourse of foreigners to the ports of England, together with the communication among all the different countries in Europe. which went on increasing from the beginning of the twelfth century, is sufficient to justify all the observations and reasonings in the text concerning the influence of commerce on the state of manners and of society.

#### Note XXXI. Sect. III. p. 145. [HH]

I have not been able to discover the precise manner in which the justiza was appointed. Among the claims of the junta or union formed against James I., A.D. 1264, this was one; that the king should not nominate any person to be justiza, without the consent or approbation of the ricoshombres or nobles. Zurita Anales de Aragon, vol. i. p. 180. But the king, in his answer to their remonstrance, asserts, " that it was established by immemorial practice, and was conformable to the laws of the kingdom, that the king, in virtue of his royal prerogative, should name the justiza." Zurita, Ib. 181. Blanca, 656. From another page in Zurita, it appears, that while the Aragonese enjoyed the privilege of the union, i.e. the power of confederating against their sovereign as often as they conceived that he had violated any of their rights and immunities, the justiza was not VOL. IV.

only nominated by the king, but held his office during the king's pleasure. Nor was this practice attended with any bad effects, as the privilege of the union was a sufficient and effectual check to any abuse of the royal prerogative. when the privilege of the union was abolished as dangerous to the order and peace of society, it was agreed that the justiza should continue in office during life. Several kings. however, attempted to remove justizas who were obnoxious to them, and they sometimes succeeded in the attempt. In order to guard against this encroachment, which would have destroyed the intention of the institution, and have rendered the justiza the dependant and tool of the crown. instead of the guardian of the people, a law was enacted in the cortes, A. D. 1442, ordaining that the justiza should continue in office during life, and should not be removed from it unless by the authority of the cortes. ct Observancias del Reyno de Arag. lib. i. p. 22. By former laws the person of the justiza had been declared sacred, and he was responsible only to the cortes. Ibid. Zurita and Blanca, who both published their histories while the justiza of Aragon retained the full exercise of his privileges and jurisdiction, have neglected to explain several circumstances with regard to the office of that respectable magistrate, because they addressed their works to their countrymen, who were well acquainted with every particular concerning the functions of a judge, to whom they looked up as to the guardian of their liberties. It is vain to consult the later historians of Spain, about any point with respect to which the excellent historians whom I have named are silent. The ancient constitution of their country was overturned, and despotism established on the ruin of its liberties, when the writers of this and the preceding centuries composed their histories, and on that account they had little curiosity to know the nature of those institutions to which their ancestors owed the enjoyment of freedom, or they were afraid to describe them with much accuracy. The spirit with which Mariana, his continuator Miniana, and Forreras, write their histories, is very different from that of the two historians of Aragon, from whom I have taken my account of the constitution of that kingdom.

Twacircumstances concerning the justiza, besides those which I have mentioned in the text, are worthy of observation: 1. None of the ricoshombres, or noblemen of the first order, could be appointed justiza. He was taken out of the second class of cavalleros, who seem to have been nearly

of the same condition or rank with gentlemen or commoners in Great Britain. Fueros et Observanc. del Reyno, &c. lib. i. p. 21. b. The reason was, by the laws of Aragon, the ricoshombres were not subject to capital punishment; but as it was necessary, for the security of liberty, that the justiza should be accountable for the manner in which he executed the high trust reposed in him, it was a powerful restraint upon him to know that he was liable to be punished capitally. Blanca, p. 657.756. Zurita, tom. ii. 229. Fueros et Observanc. lib. ix. p. 182. b. 183. It appears too from many passages in Zurita, that the justiza was appointed to check the domineering and oppressive spirit of the nobles, as well as to set bounds to the power of the monarch, and therefore he was chosen from an order of citizens equally interested in opposing both.

2. A magistrate possessed of such vast powers as the Justiza, might have exercised them in a manner pernicious to the state, if he himself had been subject to no control. A constitutional remedy was on that account provided against this danger. Seventeen persons were chosen by lot in each meeting of the cortes. These formed a tribunal, called the Court of Inquisition, into the office of justiza. This court met at three stated terms in each year. Every person had liberty of complaining to it of any iniquity or neglect of duty in the justiza, or in the inferior judges, who acted in his name. The justiza and his deputies were called to answer for their conduct. The members of the court passed sentence by ballot. They might punish by degradation, confiscation of goods, or even with death. The law which erected this court, and regulated the form of its procedure, was enacted A. D. 1461. Zurita Anales, iv. 102. Blanca Comment. Rer. Aragon, 770. Previous to this period, inquiry was made into the conduct of the justiza, though not with the same formality. He was, from the first institution of the office, subject to the review of the cortes. The constant dread of such an impartial and severe inquiry into his behaviour, was a powerful motive to the vigilant and faithful discharge of his duty. A remarkable instance of the authority of the justiza, when opposed to that of the king, occurs in the year 1386. By the constitution of Aragon, the eldest son or heir-apparent to the crown possessed considerable power and jurisdiction in the kingdom. Fueros et Observanc. del Reyno de Arag. lib. i. p. 16. Peter IV., instigated by a second wife, attempted to deprive his son of this, and enjoined his subjects to yield

him no obedience. The prince immediately applied to the justiza; "the safeguard and defence (says Zurita) against all violence and oppression." The justiza granted him the firmo de derecho, the effect of which was, that upon his giving surety to appear in judgment, he could not be deprived of any immunity or privilege which he possessed, but in consequence of a legal trial before the justiza, and of a sentence pronounced by him. This was published throughout the kingdom, and notwithstanding the proclamation in contradiction to this which had been issued by the king, the prince continued in the exercise of all his rights, and his authority was universally recognised. Zurita Anales de Aragon, tom. ii. 385.

#### Note XXXII. Sect. III. p. 146. [II]

I HAVE been induced, by the concurring testimony of many respectable authors, to mention this as the constitutional form of the oath of allegiance, which the Aragonese took to their sovereigns. I must acknowledge, however, that I have not found this singular oath in any Spanish author whom I have had an opportunity of consulting. It is mentioned neither by Zurita, nor Blanca, nor Argensola, nor Sayas, who were all historiographers appointed by the cortes of Aragon to record the transactions of the kingdom. All these writers possess a merit which is very rare among They are extremely accurate in tracing the progress of the laws and constitution of their country. Their silence with respect to this, creates some suspicion concerning the genuineness of the oath. But as it is mentioned by so many authors, who produce the aucient Spanish words in which it is expressed, it is probable that they have taken it from some writer of credit, whose works have not fallen into my hands. The spirit of the oath is perfectly agreeable to the genius of the Aragonese constitution. Since the publication of the first edition, the learned M. Totze, professor of history at Batzow, in the duchy of Mecklenburg, has been so good as to point out to me a Spanish author of great authority, who has published the words of this oath. It is Antonio Perez a native of Aragon, secretary to Philip II. The words of the oath are, "Nos que valemos tanto como vos, os hazemos nuestro Rey y Segnor, con tal que nos guardeys nuestros fucros, y libertades, y si No, No." Lan Obras y Relaciones de Ant. Perez. 8vo. par Juan de la Planche, 1631, p. 143.

The privilege of union, which I have mentioned in the preceding Note, and alluded to in the text, is indeed one of the most singular which could take place in a regular government, and the oath that I have quoted expresses nothing more than this constitutional privilege entitled the Aragonese to perform. If the king or his ministers violated any of the laws or immunities of the Aragonese, and did not grant immediate redress in consequence of their representations and remonstrances, the nobles of the first rank, or Ricoshombres de natura, et de mesnada, the equestrian order. or the nobility of the second class, called Hidalgos et Infanciones, together with the magistrates of cities, might, either in the cortes, or in a voluntary assembly, join in union, and binding themselves by mutual oaths and the exchange of hostages to be faithful to each other, they might require the king, in the name and by the authority of this body corporate, to grant them redress. If the king refused to comply with their request, or took arms in order to oppose them. they might, in virtue of the privilege of union, instantly withdraw their allegiance from the king, refuse to acknowledge him as their sovereign, and proceed to elect another monarch; nor did they incur any guilt, or become liable to any prosecution on that account. Blanca Com. Rer. Arag. 661, 669. This union did not resemble the confederacies in other feudal kingdoms. It was a constitutional association, in which legal privileges were vested; which issued its mandates under a common scal, and proceeded in all its operations by regular and ascertained forms. This dangerous right was not only claimed, but exercised. In the year 1287, the Aragonese formed a union in opposition to Alfonso III., and obliged that king not only to comply with their demands, but to ratify a privilege so fatal to the power of the crown. Zurita Anales, tom. i. p. 322. In the year 1347, a union was formed against Peter IV. with equal success, and a new ratification of the privilege was extorted. Zurita, tom. ii. p. 202. But soon after, the king, having defeated the leaders of the union in battle, the privilege of union was finally abrogated in the cortes, and all the laws or records which contained any confirmation of it were cancelled or destroyed. The king, in presence of the cortes, called for the act whereby he had ratified the union, and having wounded his hand with his poniard, he held it above the record. "That privilege (says he) which has been so fatal to the kingdom, and so injurious to royalty, should be effaced with the blood of a king." Zurita, tom. ii. p. 229. The law abolishing the

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union is published. Fueros et Observanc. lib. ix. p. 178. From that period, the justiza became the constitutional guardian of public liberty, and his power and jurisdiction occasioned none of those violent convulsions which the tumultuary privilege of the union was apt to produce. The constitution of Aragon, however, still remained extremely free. One source of this liberty arose from the early admission of the representatives of cities into the cortes. seems probable from Zurita, that burgesses were constituent members of the cortes from it first institution. mentions a meeting of cortes, A. D. 1133, in which the procuradores de las ciudades y villas were present. Tom. i. This is the constitutional language in which their presence is declared in the cortes, after the journals of that court were regularly kept. It is probable, that an historian so accurate as Zurita would not have used these words, if he had not taken them from some authentic re-It was more than a century after this period before the representatives of cities formed a constituent part in the supreme assemblies of the other European nations. The free spirit of the Aragonese government is conspicuous in many particulars. The cortes not only opposed the attempts of their kings to increase their revenue, or to extend their prerogative, but they claimed rights and exercised powers which will appear extraordinary even in a country accustomed to the enjoyment of liberty. In the year 1286, the cortes claimed the privilege of naming the members of the king's council and the officers of his household; and they seem to have attained it for some time. Zurita, tom. i. p. 303, 307. It was the privilege of the cortes to name the officers who commanded the troops raised by their authority. This seems to be evident from a passage in Zurita. When the cortes, in the year 1503, raised a body of troops to be employed in Italy, it passed an act, empowering the king to name the officers who should command them, Zurita, tom. v. p. 274; which plainly implies, that without this warrant it did not belong to him in virtue of his prerogative. In the Fueros et Observancias del Reyno de Aragon, two general declarations of the rights and privileges of the Aragonese are published; the one in the reign of Pedro I., A. D. 1283, the other in that of James II., A. D. 1325. They are of such a length, that I cannot insert them; but it is evident from these, that not only, the privileges of the nobility, but the rights of the people, personal as well as political, were, at that period, more extensive and better understood than in any kingdom in Europe. Lib. i. p. 7. 9. The oath by which the king bound himself to observe those rights and liberties of the people, was very solemn. Ibid. p. 14. b. & p. 15. The cortes of Aragon discovered not only the jealousy and vigilance which are peculiar to free states, in guarding the essential parts of the constitution, but they were scrupulously attentive to observe the most minute forms and ceremonies to which they were accustomed. According to the established laws and customs of Aragon, no foreigner had liberty to enter the hall in which the cortes assembled. Ferdinand, in the year 1481, appointed his queen. Isabella, regent of the kingdom, while he was absent during the course of the campaign. The law required that a regent should take the oath of fidelity in presence of the cortes; but, as Isabella was a foreigner, before she could be admitted, the cortes thought it necessary to pass an act authorizing the serjeant-porter to open the door of the hall, and to allow her to enter: "so attentive were they (says Zurita) to observe their laws and forms, even such as may seem most minute," Tom. iv. p. 313.

The Aragonese were no less solicitous to secure the personal rights of individuals, than to maintain the freedom of the constitution; and the spirit of their statutes with respect to both was equally liberal. Two facts relative to this matter merit observation. By an express statute in the year 1335, it was declared to be unlawful to put any native Aragonese to the torture. If he could not be convicted by the testimony of witnesses, he was instantly absolved. Zurita, tom. ii. p. 66. Zurita records the regulation with the satisfaction natural to an historian, when he contemplates the humanity of his countrymen. He compares the laws of Aragon to those of Rome, as both exempted citizens and freemen from such ignominious and cruel treatment, and had recourse to it only in the trial of Zurita had reason to bestow such an encomium on the laws of his country. Torture was at that time permitted by the laws of every other nation in Europe. Even in England, from which the mild spirit of legislation has long banished it, torture was not, at that time, unknown. Observations on the Statutes, chiefly the more ancient, &c. p. 66.

The other fact shews, that the same spirit which influenced the legislature prevailed among the people. In the year 1485, the religious zeal of Ferdinand and Isabella prompted them to introduce the Inquisition into Aragon, Though the Aragonese were no less superstitiously attached than the other Spaniards to the Roman Catholic faith, and no less desirous to root out the seeds of error and of heresy which the Jews and Moors had scattered, yet they took arms against the inquisitors, murdered the chief inquisitor, and long opposed the establishment of that tribunal. The reason which they gave for their conduct was, that the mode of trial in the Inquisition was inconsistent with liberty. The criminal was not confronted with the witnesses, he was not acquainted with what they deposed against him, he was subjected to torture, and the goods of persons condemned were confiscated. Zurita Anales, tom. iv. p. 341.

The form of government in the kingdom of Valencia, and principality of Catalonia, which were annexed to the crown of Aragon, was likewise extremely favourable to liberty. The Valencians enjoyed the privilege of union in the same manner with the Aragonese. But they had no magistrate resembling the Justiza. The Catalonians were no less jealous of their liberties than the two other nations, and no less bold in asserting them. But it is not necessary for illustrating the following history to enter into any farther detail concerning the peculiarities in the con-

stitution of these kingdoms.

# Note XXXIII. Sect. III. p. 147. [KK]

I HAVE searched in vain among the historians of Castile for such information as might enable me to trace the progress of laws and government in Castile, or to explain the nature of the constitution with the same degree of accuracy wherewith I have described the political state of Aragon. It is manifest, not only from the historians of Castile, but from its ancient laws, particularly the Fuero Juzgo, that its monarchs were originally elective. Ley, 2. 5. 8. were chosen by the bishops, the nobility, and the people. Ibid. It appears from the same venerable code of laws, that the prerogative of the Castilian monarchs was extremely Villaldiego, in his commentary on the Fuero Juzgo, produces many facts and authorities in confirmation of both these particulars. Dr. Geddes, who was well acquainted with Spanish literature, complains that he could find no author who gave a distinct account of the cortes or supreme assembly of the nation, or who described the manner in which it was held, or mentioned the precise

number of members who had a right to sit in it. He produces, however, from Gil Gonzales d'Avila, who published a history of Henry II., the writ of summons to the town of Abula, requiring it to choose representatives to appear in the cortes which he called to meet A.D. 1390. From this we learn, that prelates, dukes, marquisses, the masters of the three military orders, condes and ricoshombres, were required to attend. These composed the bodies of ecclesiastics and nobles, which formed two members of the legislature. The cities which sent members to that meeting of the cortes were forty-eight. The number of representatives (for the cities had right to choose more or fewer according to their respective dignity) amounted to a hundred and twenty-five. Geddes' Miscellaneous Tracts, vol. i. p. 331. Zurita having occasion to mention the cortes which Ferdinand held at Toro A.D. 1505, in order to secure for himself the government of Castile after the death of Isabella. records with his usual accuracy the names of the members present, and of the cities which they represented. From that list it appears, that only eighteen cities had deputies in this assembly. Anales de Aragon, tom. vi. p. 3. was the occasion of this great difference in the number of cities represented in these two meetings of the cortes, I am unable to explain.

## Note XXXIV. Sect. III. p. 149. [LL]

A GREAT part of the territory in Spain was engrossed by the nobility. L. Mariæus Siculus, who composed his treatise De Rebus Hispaniæ during the reign of Charles V., gives a catalogue of the Spanish nobility, together with a yearly rent of their estates. According to his account, which he affirms was as accurate as the nature of the subject would admit, the sum total of the annual revenue of their lands amounted to one million four hundred and eighty-two thousand ducats. If we make allowance for the great difference in the value of money in the fifteenth century from that which it now bears, and consider that the catalogue of Mariæus includes only the Titulados, or nobility whose families were distinguished by some honorary title, their wealth must appear very great. L. Marinæus ap. Schotti Scriptores Hispan. vol. i. p. 323. The commons of Castile, in their contests with the crown, which I shall hereafter relate, complain of the extensive property of the nobility as extremely pernicious to the kingdom. In

one of their manifestoes they assert, that from Valladolid to St. Jago in Galicia, which was a hundred leagues, the crown did not possess more than three villages. All the rest belonged to the nobility, and could be subjected to no public burden. Sandov. Vida del Emperor Carl. V. vol. i. p. 422. It appears from the testimony of authors quoted by Bovadilla, that these extensive possessions were bestowed upon the ricoshombres, hidalgos, and cavalleros, by the kings of Castile, in reward for the assistance which, they had received from them in expelling the Moors. They likewise obtained by the same means a considerable influence on the cities, many of which anciently depended upon the nobility. Politica para Corregidores. Amb. 1750, fol. vol. i. p. 440, 442.

#### Note XXXV. Sect. III. p. 15I. [MM]

I have been able to discover nothing certain, as I observed, Note XVIII., with respect to the origin of communities or free cities in Spain. It is probable, that as soon as the considerable towns were recovered from the Moors, the inhabitants who fixed their residence in them, being persons of distinction and credit, had all the privileges of municipal government and jurisdiction conferred upon them. Many striking proofs occur of the splendour, wealth, and power, of the Spanish cities. Hieronymus Paulus wrote a description of Barcelona in the year 1491, and compares the dimensions of the town to that of Naples, and the elegance of its buildings, the variety of its manufactures, and the extent of its commerce, to Florence, Hieron. Paulus ap. Schottum Scrip. Hisp. ii. 844. Marinæus describes Toledo as a large and populous city. A great number of its inhabitants were persons of quality and of illustrious rank. Its commerce was great. It carried on with great activity and success the manufactures of silk and wool; and the number of inhabitants employed in these two branches of trade amounted nearly to ten thousand. Marin. ubi supr. p. 308. I know no city, says he, that I would prefer to Valladolid for elegance and splendour. Ibid. p. 312. We may form some estimate of its populousness from the following circumstances. The citizens having taken arms in the year 1516, in order to oppose a measure concerted by cardinal Ximenes, they mustered in the city, and in the territory which belonged to it, thirty thousand fighting men. Sandov. Vida del Emp. Carl. V.

tom. i. p. 81. The manufactures carried oh in the towns of Spain were not intended merely for home consumption. they were exported to foreign countries, and their commerce was a considerable source of wealth to the inhabitants. The maritime laws of Barcelona are the foundation of mercantile jurisprudence in modern times, as the Leges Rhodiæ were among the ancients. All the commercial states in Italy adopted these laws, and regulated their trade according to them. Sandi Storia Civile Veneziani, vol. ii. p. 865. It appears from several ordonnances of the kings of France, that the merchants of Aragon and Castile were received on the same footing, and admitted to the same privileges, with those of Italy. Ordonnances des Roys, &c. tom. ii. p. 135; iii. 166, 504, 635. Cities in such a flourishing state became a respectable part of the society, and were entitled to a considerable share in the legislature. The magistrates of Barcelona aspired to the highest honour a Spanish subject can enjoy, that of being covered in the presence of their sovereign, and of being treated as grandees of the kingdom. Origin de la dignidad de Grande de Castilla por don Alonso Carillo. Madr. 1657, p. 18.

#### Note XXXVI. Sect. III. p. 153. [NN]

THE military order of St. Jago, the most honourable and opulent of the three Spanish orders, was instituted about the year 1170. The bull of confirmation by Alexander III. is dated A.D. 1176. At that time a considerable part of Spain still remained under subjection to the Moors, and the whole country was much exposed to depredations not only of the enemy, but of banditti. It is no wonder, then, that an institution, the object of which was to oppose the enemies of the Christian faith, and to restrain and punish those who disturbed the public peace, should be extremely popular, and meet with general encouragement. wealth and power of the order became so great, that, according to one historian, the grand-master of St. Jago was the person in Spain of greatest power and dignity next to the king. Æl. Anton, Nebrissensis, ap. Schott, Scrip. Hisp. i. 812. Another historian observes, that the order possessed every thing in Castile that a king would most desire to obtain. Zurita Anales, v. 22. The knights took the vows of obedience, of poverty, and of conjugal chastity. By the former they were bound implicitly to obey the commands of their grand-master. The order could bring into

the field a thousand men at arms. Æl. Ant. Nebriss. p. 815. If, as we have reason to believe, these men at arms were accompanied, as was usual in that age, this was a formidable body of cavalry. There belonged to this order eighty-four commanderies, and two hundred priories and other benefices. Dissertations sur la Chevalerie par Hon. de St. Marie, p. 262. It is obvious how formidable to his sovereign the command of these troops, the administration of such revenues, and the disposal of so many offices, must have rendered a subject. The other two orders, though inferior to that of St. Jago in power and wealth, were nevertheless very considerable fraternities. When the conquest of Granada deprived the knights of St. Jago of those enemics against whom their zeal was originally directed. superstition found out a new object, in defence of which they engaged to employ their courage. To their usual oath, they added the following clause: "We do swear to believe, to maintain, and to contend in public and in private. that the Virgin Mary, the Mother of God, our Lady, was conceived without the stain of original sin." This addition was made about the middle of the seventeenth century. Honorè de St. Marie, Dissertations, &c. p. 263.-Nor is such a singular engagement peculiar to the order of St. Jago. The members of the second military order in Spain. that of Calatrava, equally zealous to employ their prowess in defence of the honours of the Blessed Virgin, have likewise professed themselves her true knights. Their vow. conceived in terms more theologically accurate than that of St. Jago, may afford some amusement to an English reader. "I vow to God, to the Grand Master, and to you who here represent his person, that now, and for ever, 1 will maintain and coutend, that the Virgin Mary, Mother of God, our Lady, was conceived without original sin, and never incurred the pollution of it; but that in the moment of her happy conception, and of the union of her soul with her body, the Divine Grace prevented and preserved her from original guilt, by the merits of the passion and death of Christ our Redeemer," her future Son, foreseen in the Divine Counsel, by which she was truly redeemed, and by a more noble kind of redemption than any of the children of Adam. In the belief of this truth, and in maintaining the honour of the most Holy Virgin, through the strength of Almighty God, I will live and will die." Definiciones de la Orden de Calatrava, conforme al Capitulo General en 1652, fol. Madr. 1748. p. 153. Though the church of

Rome hath prudently avoided to give its sanction to the doctrine of the immaculate conception, and the two great monastic orders of St. Dominic and St. Francis. have espoused opposite opinions concerning it, the Spaniards are such ardent champions for the honour of the Virgin, that when the present king of Spain instituted a new military order in the year 1771, in commemoration of the birth of his grandson, he put it under the immediate protection of the most Holy Mary in the mystery of her immaculate conception. Constitutiones de la Real y distinguida Orden. Espanola de Carlos III. p. 7. To undertake the defence of the Virgin Mary's honour had such a resemblance to that species of refined gallantry, which was the original object of chivalry, that the zeal with which the military orders bound themselves, by a solemn vow, to defend it, was worthy of a true knight, in those ages when the spirit of the institution subsisted in full vigour. But in the present age, it must excite some surprise to see the institution of an illustrious order connected with a doctrine so extravagant and destitute of any foundation in Scripture.

### Note XXXVII. Sect. III. p. 155. [OO]

I have frequently had occasion to take notice of the defects in police during the middle ages, occasioned by the feebleness of government, and the want of proper subordination among the different ranks of men. I have observed in a former Note, that this greatly interrupted the intercourse between nations, and even between different places in the same kingdom. The description which the Spanish historians give of the frequency of rapine, murder, and every act of violence, in all the provinces of Spain, are amazing, and present to us the idea of a society but little removed from the disorder and turbulence of that which has been called a state of nature. Zurita Anales de Arag. i. 175. Æl. Ant. Nebrissensis rer. a Fordin. gestar. Hist. ap. Scottum, II. 849. Though the excess of these disorders rendered the institution of the Santa Hermandad necessary, great care was taken at first to avoid giving any offence or alarm to the nobility. The jurisdiction of the judges of the Hermandad was expressly confined to crimes which violated the public peace. All other offeners were lest to the cognizance of the ordinary judges. If a person was guilty of the most notorious perjury in any trial before a judge of the Hermandad, he could not punish him, but

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was obliged to remit the case to the ordinary judge of the place. Commentaria in Regias Hispan. Constitut, per Alph. de Azevedo, pars v. p. 223, &c. fol. Duaci, 1612. Notwithstanding these restrictions, the barons were early sensible how much the establishment of the Hermandad would encroach on their jurisdiction. In Castile, some opposition was made to the institution; but Ferdinand had the address to obtain the consent of the constable to the introduction of the Hermandad into that part of the kingdom where his estate lay; and by that means, as well as the popularity of the institution, he surmounted every obstacle that stood in its way. Æl. Ant. Nebrissen. 851. In Aragon, the nobles combined against it with great spirit; and Ferdinand, though he supported it with vigour, was obliged to make some concessions in order to reconcile them. Zurita Anales de Arag. iv. 356. The power and revenue of the Hermandad in Castile seems to have been very great. Ferdinand, when preparing for the war against the Moors of Granada, required of the Hermandad to furnish him sixteen thousand beasts of burden, together with eight thousand men to conduct them, and he obtained what he demanded. Æl. Ant. Nebriss. 881. The Hermandad has been found to be of so much use in preserving peace, and restraining or detecting crimes, that it is still continued in Spain; but as it is no longer necessary either for moderating the power of the nobility, or extending that of the crown, the vigour and authority of the institution diminish gradually.

# Note XXXVIII. Sect. III. p. 157. [PP]

Nothing is more common among antiquaries, and there is not a more copious source of error, than to decide concerning the institutions and manners of past ages, by the forms and ideas which prevail in their own times. The French lawyers in the seventeenth and eighteenth conturies, having found their sovereigns in possession of absolute power, seem to think it a duty incumbent on them to maintain that such unbounded authority belonged to the crown in every period of their monarchy. "The government of France," says M. de Real very gravely, "is purely-monarchical at this day, as it was from the beginning. Our kings were absolute originally as they are at present." Science du Governement, tom. ii. p. 31... It is impossible, however, to conceive two states of civil society

more unlike to each other, than that of the Prench nation under Clovis, and that under Louis XV. It is evident from the codes of laws of the various tribes which settled in Gaul, and the countries adjacent to it, as well as from the history of Gregory of Tours, and other early annalists, that among all these people the form of government was extremely rude and simple, and that they had scarcely began to acquire the first rudiments of that order and police which are necessary in extensive societies. The king or leader had the command of soldiers or companions, who followed his standard from choice, not by constraint. I have produced the clearest evidence of this, Note VI. event related by Gregory of Tours, lib. iv. c. 14, affords the most striking proof of the dependance of the early French kings on the sentiment and inclination of their people.-Clotaire I. having marched at the head of his army, in the year 553, against the Saxons, that people, intimidated at his approach, sued for peace, and offered to pay a large sum to the offended monarch. Clotaire was willing to close with what they proposed. But his army insisted to be led forth to battle. The king employed all his eloquence to persuade them to accept of what the Saxons were ready to pay. The Saxons, in order to soothe them, increased their original offer. The king renewed his solicitations; but the army enraged, rushed upon the king, tore his tent in pieces, dragged him out of it, and would have slain him on the spot, if he had not consented to lead them instantly against the enemy.

If the carly monarchs of France possessed such limited authority, even while at the head of their army, their prerogative during peace will be found to be still more confined. They ascended the throne not by any hereditary right, but in consequence of the election of their subjects. In order to avoid an unnecessary number of quotations, I refer my readers to Hottomanni Franco-gallia, cap. vi. p. 47. edit. 1573, where they will find the fullest proof of this from Gregory of Tours, Amoinus, and the most authentic historians of the Merovingian kings. The effect of this election was not to invest them with absolute power. Whatever related to the general welfare of the nation, was submitted to public deliberation, and determined by the suffrage of the people, in the annual assemblies called Les Champs de Mars and Les Champs de Mai. These assemblies were called Champs, because, according to the custom of all the barbarous nations, they were held in the open air,

in some plain capable of containing the vast number of persons who had a right to be present. Jo. Jac. Sorberus de Comitiis veterum Germanorum, vol. i. § 19, &c. They were denominated Champs de Mars and de Mai, from the months in which they were held. Every freeman seems to have had a right to be present in these assemblies. Sorberus, ibid. § 133, &c. The ancient annals of the Franks describe the persons who were present in the assembly held A. D. 788, in these words: In placito Ingelheimensi conveniunt pontifices, majores, minores, sacerdotes, reguli, duces, comites, præsecti, cives, oppidani. Apud Sorber. § 304. There every thing that concerned the happiness of their country, says an ancient historian, every thing that could be of benefit to the Franks, was considered and enjoined. Fredegarius ap. Du Cange Glossar. voc. Campus Martii. Chlotharius II. describes the business, and acknowledges the authority, of these assemblies. They are called, says he, that whatever relates to the common safety may be considered and resolved by common deliberation; and whatever they determine to that I will conform. Amoinus de Gest. Franc. lib. iv. c. i. ap. Bouquet Recucil, iii. 116. The statutory clauses, or words of legislative authority in the decrees issued in these assemblies, run not in the name of the king alone. "We have treated, says Childebert, in a decree, A.D. 532, in the assembly of March, together with our nobles, concerning some affairs, and we now publish the conclusion, that it may come to the knowledge of all." Childeb. Decret. ap. Bouquet Recueil des Histor. tom. iv. p. 3. We have agreed together with our vassals. Ibid. § 2. It is agreed in the assembly in which we were all united. Ibid. § 4. The Salic laws, the most venerable monument of French jurisprudence, were enacted in the same manner. Dictaverunt Salicam legem process ipsius gentis, qui tunc temporis apud eam erant Rectores. Sunt autem electi de pluribus viri quatuor-qui per tres Malos convenientes, omnes causarum origines solicité discurrendo, tractantes de singulis judicium decreverunt hoc modo. Præf. Leg. Salic. ap. Bouquet. Ibid. p. 122. Hoc decretum est apud regem et principes ejus, et apud cunctum populum christianum, qui infra regnum Merwingorum consistunt. Ibid. p. 124. Nay, even in their charters, the kings of the first race are careful to specify that they were granted with the consent of their vassals. Ego Childebertus Rex unà cum consensu et voluetate Francorum, &c. A.D. Bouquet, ibid. 622. Chlotharius III. una cum 558.

patribus nostris episcopis, optimatibus, cæterisque palatii nostri ministris, A.D. 664. Ibid. 648. De consensu fidelium nostrorum. Mally Observ. tom. i. p. 239. The historians likewise describe the functions of the king in the national assemblies in such terms as imply that his authority there was extremely small, and that every thing depended on the court itself. Ipse Rex (says the author of Annales Francorum, speaking of the Field of March) sedebat in sella regia, circumstante exercitu, præcipiebatque is, die illo, quicquid a Francis decretum crat. Bouquet Recueil, tom. ii. p. 647.

That the general assemblies exercised supreme jurisdiction over all persons, and with respect to all causes, is so evident as to stand in need of no proof. The trial of Brunehaut, A.D. 613, how unjust soever the sentence against her may be, as related by Fredegarius, Chron. cap. 42, Bouquet, ibid. 430, is in itself sufficient proof of this. The notorious violence and iniquity of the sentence serve to demonstrate the extent of jurisdiction which this assembly possessed, as a prince so sanguinary as Clothaire II. thought the sanction of its authority would be sufficient to justify his rigorous treatment of the mother and grandmother of so

many kings.

With respect to conferring donatives on the prince, we may observe, that among nations whose manners and political institutions are simple, the public as well as individuals having few wants, they are little acquainted with taxes, and free uncivilized tribes disdain to submit to any stated imposition. This was remarkably the case of the Germans, and of all the various people that issued from that country. Tacitus pronounces two tribes not to be of German origin, because they submitted to pay taxes. De Morib. Germ. c. 43. And speaking of another tribe according to the ideas prevalent in Germany, he says, " they were not degraded by the imposition of taxes." Ibid. c. 29. Upon the settlement of the Franks in Gaul, we may conclude, that while elated with the consciousness of victory, they would not renounce the high-spirited ideas of their ancestors, or voluntarily submit to a burden which they regarded as a badge of scrvitude. The evidence of the earliest records and historians justify this conclusion. M. de Montesquieu, in the twelfth and subsequent chapters of the thirteenth book of l'Esprit des Loix, and M. de Mably Observat. sur l'Hist. de France, tom. i. p. 247, have investigated this fact with great attention, and have proved

Mably, vol. i. p. 267.

clearly that the property of freemen among the Franks was not subject to any stated tax. That the state required nothing from persons of this rank but military service at their own expense, and that they should entertain the king in their houses when he was upon any progress through his dominions, or his officers when sent on any public employment, furnishing them with carriages and horses. Monarchs subsisted almost entirely upon the revenues of their own domains, and upon the perquisites arising from the administration of justice, together with a few small fines and forfeitures exacted from such as had been guilty of certain trespasses. It is foreign from my subject to enumerate these. The reader may find them in Observat. de M. de

When any extraordinary aid was granted by freemen to their sovereign, it was purely voluntary. In the annual assembly of March or May, it was the custom to make the king a present of money, of horses or arms, or of some other thing of value. This was an ancient custom, and derived from their ancestors the Germans. Mos est civitatious. ultro ac viritim conferri principibus vel armentorum vel frugum, quod pro honore acceptum, etiam necessitatibus Tacit. de Mor. Germ. c. 15. These gifts, if we subvenit. may form a judgment concerning them from the general terms in which they are mentioned by the ancient historians, were considerable, and made no small part of the royal revenue. Many passages to this purpose are produced by M. Du Cange, Dissert. iv. sur Joinville, p. 153. Sometimes the conquered people specified the gift which they bound themselves to pay annually, and it was exacted as a debt if they failed. Annales Metenses, ap. Du Cange, ibid. p. 155. It is probable that the first step towards taxation was to ascertain the value of these gifts which were originally gratuitous, and to compel the people to pay the sum at which they were rated. Still, however, some memory of their original was preserved, and the aids granted to monarchs in all the kingdoms of Europe were termed benevolences or free gifts.

The kings of the second race in France were raised to the throne by the election of the people. Pepinus Rex pius, says an author who wrote a few years after the transaction which he records per authoritatem Papæ, et unctionem sancti chrismatis et electionem omnium Francorum in regni solio sublimatus est. Clausula de Pepini consecratione ap. Beuq. Recucil des Histor. tom. v. p. 9. At the same time, as the

chief men of the nation had transferred the crown from one family to another, an oath was exacted of them, that they should maintain on the throne the family which they had now promoted; ut nunquam de alterius lumbis regem in ævo præsumant eligere. Ibid. p. 10. This oath the nation faithfully observed during a considerable space of time. The posterity of Pepin kept possession of the throne; but with respect to the manner of dividing their dominions among their children, princes were obliged to consult the general assembly of the nation. Thus Pepin himself, A.D. 768, appointed his two sons, Charles and Carlomannus, to reign as joint sovereigns; but he did this, una cum consensu Fancorum et procerum suorum seu et episcoporum, before whom he laid the matter in their general assembly. Conventus apud sanctum Dionysium, Capitular. vol. i. p. 187. This destination the French confirmed in a subsequent assembly which was called upon the death of Pepin; for, as Eginhart relates, they not only appointed them kings, but by their authority they regulated the limits of their respective territories. Vita Car. Magni ap. Bouquet Recueil. tom. v. p. 90. In the same manner, it was by the authority of the supreme assemblies that any dispute which arose among the descendants of the royal family was determined. Charlemagne recognises this important part of their jurisdiction, and confirms it in his charter concerning the partitions of his dominions; for he appoints, that, in case of any uncertainty with respect to the right of the several competitors, he whom the people shall choose shall succeed to the Capitular, vol. 1. p. 442. crown.

Under the second race of kings, the assembly of the nation distinguished by the name of Conventus, Malli, Placita, were regularly assembled once a year at least, and frequently twice in the year. One of the most valuable monuments of the history of France is the treatise of Hinemarus, archbishop of Rheims, de ordine Palatii. He died A. D. 882, only sixty-eight years after Charlemagne, and " he relates in that short discourse the facts which were communicated to him by Adalhardas, a minister and confidant of Charlemagne. From him we learn, that this great monarch never failed to hold the general assembly of his subjects every year. In quo placito generalitas universorum majorum tam clericorum quam laicorum cenveniebat. Hinem, Oper, edit, Sirmondi, vol. ii. c. 29, 211. In these assemblies, matters which related to the general safety and state of the kingdom were always discussed, before they entered upon any private or less important business. Ibid.

c. 33. p. 213. 'His immediate successors imitated his example, and transacted no affair of importance without the advice of their great council.

Under the second race of kings, the genius of the French government continued to be in a good measure democratical. The nobles, the dignified ecclesiastics, and the great officers of the crown, were not the only members of the national council; the people, or the whole body of free men. either in person or by their representatives, had a right to be present in it. Huncmarus, in describing the manner of holding the general assemblies, says, that if the weather was favourable, they met in the open air; but if otherwise, they had different apartments allotted to them: so that the dignified clergy were separated from the laity, and the comites vel hujusmodi principes sibimet honorificabiliter a cætera multitudine segregarentur. Ibid. c. 35. p. 114. Agobardus, archbishop of Lyons, thus describes a national council in the year 833, wherein he was present. Qui ubique conventus extitit ex reverendissimis episcopis, et magnificentissimis viris illustribus, collegio quoque abbatum et comitum, promiscuæque ætatis et dignitatis populo. The cætera multitudo of Hincmarus is the same with the populus of Agobardus, and both describe the inferior order of free men, the same who were afterward known in France by the name of the third estate, and in England by the name of commons. The people, as well as the members of higher dignity, were admitted to a share of the legislative power. Thus, by a law, A. D. 803, it is ordained, "that the question shall be put to the people with respect to every new law, and if they shall agree to it, they shall confirm it by their signature." Capit. vol. i. 394. There are two capitularia which convey to us a full idea of the part which the people took in the administration of government. When they felt the weight of any grievance, they had a right to petition the sovereign for redress. One of these petitions, in which they desire that ecclesiastics might be exempted from bearing arms, and from serving in person against the enemy, is still extant. It is addressed to Charlemagne, A. D. 803, and expressed in such terms as could have been used only by men conscious of liberty, and of the extensive privileges which they possessed. They conclude with requiring him to grant their demand, if he wished that they should any longer continue faithful subjects to him. That great monarsh, instead of being offended or surprised at the boldness of their petition, received it in a most gracious manner, and signified his willingness to

comply with it. But sensible that he himself did not possess legislative authority, he promises to lay the matter before the next general assembly, that such things as were of common concern to all might be there considered and established by common consent. Capitul. tom. i. p. 405-409. As the people by their petitions brought matters to be proposed in the general assembly, we learn from another capitulare the form in which they were approved there, and enacted as laws. The propositions were read aloud, and then they people were required to declare whether they assented to them or not. They signified their assent by crying three times, "We are satisfied:" and then the capitulare was confirmed by the subscription of the monarch, the clergy, and the chief men of the laity. Capitul. tom. i. p. 627. A. D. 822. It seems probable from a capitulare of Carolus Calvus, A. D. 851, that the sovereign could not not refuse his assent to what was proposed and established by his subjects in the general assembly. Tit. ix. § 6. Capital. vol. ii. p. 47. It is unnecessary to multiply quotations concerning the legislative power of the national assembly of France under the second race, or concerning its right to determine with regard to peace and war. The uniform style of the capitularia is an abundant confirmation of the former. The reader who desires any farther information with respect to the latter, may consult Les Origines ou l'Ancien Gouvernement de la France, &c. tom. iii. p. 87, &c. What has been said with respect to the admission of the people or their representatives into the supreme assembly merits attention, not only in tracing the progress of the French government, but on account of the light which it throws upon a similar question agitated in England, concerning the time when the commons became part of the legislative body in that kingdom.

# Note XXXIX. Sect. III. p. 159. [QQ]

THAT important change which the constitution of France underwent, when the legislative power was transferred from the great council of the nation to the king, has been explained from the French antiquaries with less care than they bestow in illustrating other events in their history. For that reason I have endeavoured with greater attention to trace the steps which led to this memorable revolution. I shall here add some particulars which tend to throw additional light upon it. The Leges Salicæ, the Leges Bur-

gundionum, and other codes published by the several tribes which settled in Gaul, were general laws extending to every person, to every province and district where the authority of those tribes was acknowledged. But they seem to have become obsolete; and the reason of their falling into disuse is very obvious. Almost the whole property of the nation was allodial when these laws were framed. But when the feudal institutions became general. and gave rise to an infinite variety of questions peculiar to that species of tenure, the ancient codes were of no use in deciding with regard to these, because they could not contain regulations applicable to cases which did not exist at the time when they were compiled. This considerable change in the nature of property made it necessary to publish the new regulations contained in the Capitularia. Many of these, as is evident from the perusal of them, were public laws extending to the whole French nation, in the general assembly of which they were enacted. The weakness of the greater part of the monarchs of the second race. and the disorder into which the nation was thrown by the depredations of the Normans, encouraged the barons to usurp an independent power formerly unknown in France. The nature and extent of that jurisdiction which they assumed I have formerly considered. The political union of the kingdom was at an end, its ancient constitution was dissolved, and only a feudal relation subsisted between the king and his vassals. The regal jurisdiction extended no farther than the domains of the crown. Under the last kings of the second race, these were reduced almost to nothing. Under the first kings of the third race, they comprehended little more than the patrimonial estate of Hugh Capet, which he annexed to the crown. Even with this accession, they continued to be of small extent. Velly, Hist. de France, tom. iii. p. 32. Many of the most considerable provinces in France did not at first acknowledge Hugh Capet as a lawful monarch. There are still extant several charters, granted during the first years of his reign, with this remarkable clause in the form of dating the charter: "Deo regnante, rege 'expectante," regnante domino nostro Jesu Christo, Francis autem contra jus regnum usurpante Ugone rege. Bouquet Recueil, tom. x. p. 544. A monarch whose title was thus openly disputed, was not in a condition to assert the royal jurisdiction, or to limit that of the barons.

All these circumstances rendered it easy for the barons

to usurp the rights of royalty within their own territories. The Capitularia became no less obsolete than the ancient laws; local customs were every where introduced, and became the sole rule by which all civil transactions were conducted, and all causes were tried. The wonderful ignorance which became general in France during the ninth and tenth centuries, contributed to the introduction of customary law. Few persons, except ecclesiastics, could read; and as it was not in the power of such illiterate persons to have recourse to written laws, either as their guide in business, or their rule in administering justice, the customary law, the knowledge of which was preserved by tradition, universally prevailed.

During this period, the general assembly of the nation seems not to have been called, nor to have once exerted its legislative authority. Local customs regulated and decided every thing. A striking proof of this occurs in tracing the progress of the French jurisprudence. The last of the Capitularia collected by M. Baluze, was issued in the year 921 by Charles the Simple. A hundred and thirty years clapsed from that period to the publication of the first ordonnance of the kings of the third race, contained in the great collection of M. Lauriere: and the first ordonnance which appears to be an act of legislation extending to the whole kingdom, is that of Philip Augustus, A. D. 1190. Ordon. tom. i. p. 1.18. During that long period of two hundred and sixtynine years, all transactions were directed by local customs, and no addition was made to the statutory law of France. The ordonnances, previous to the reign of Philip Augustus, contain regulations, the authority of which did not extend beyond the king's domains.

Various instances occur of the caution with which the kings of France ventured at first to exercise legislative authority. M. l'Ab. de Mably produces an ordonnance of Philip Augustus, A.D. 1206, concerning the Jews, who, in that age, were in some measure the property of the lord in whose territories they resided. But it is rather a treaty of the king with the countess of Champagne, and the compte de Dampierre, than an act of royal power; and the regulations in it seem to be established not so much by his authority, as by their consent. Observat. sur l'Hist. de France, ii. p. 355. In the same manner an ordonnance of Louis VIII. concerning the Jews, A. D. 1223, is a contract between the king and his nobles, with respect to their manner of treating that unhappy race of men. Ordon. tom. i. p. 47. The Esta-

blissemens of St. Louis, though well adapted to serve as general laws to the whole kingdom, were not published as such, but 'only as a complete code of customary law, to be of authority within the king's domains. The wisdom, the equity, and the order conspicuous in that code of St. Louis, procured it a favourable reception throughout the kingdom. The veneration due to the virtues and good intentions of its author, contributed not a little to reconcile the nation to that legislative authority which the king began to assume. Soon after the reign of St. Louis, the idea of the king's possessing supreme legislative power became common. If, says Beaumanoir, the king makes any establishment specially for his own domain, the barons may nevertheless adhere to their ancient customs; but if the establishment be general, it shall be current throughout the whole kingdom, and we ought to believe that such establishments are made with mature deliberation, and for the general good. Cout. de Beauvoisis, c. 48, p. 265. Though the kings of the third race did not call the general assembly of the nation, during the long period from Hugh Capet to Philip the Fair, yet they seem to have consulted the bishops and barons who happened to be present in their court, with respect to any new law which they published. Examples of this occur Ordon. tom. i. p. 3 & 5. This practice seems to have continued as late as the reign of St. Louis, when the legislative authority of the crown was well established. Ordon, tom, i. p. 58. A. D. 1246. This attention paid to the barons facilitated the king's acquiring such full possession of the legislative power, as enabled them afterward to exercise it without observing that formality.

The assemblies distinguished by the name of the Statesgeneral, were first called A. D. 1302, and were held occasionally from that period to the year 1614, since which time they have not been summoned. These were very different from the ancient assemblies of the French nation under the kings of the first and second race. There is no point with respect to which the French antiquaries are more generally agreed, than in maintaining that the states-general had no suffrage in the passing of laws, and possessed no proper legislative jurisdiction. The whole tenor of the French history confirms this opinion. The form of proceeding in the states-general was this: The king addressed himself, at opening the meeting, to the whole body assembled in one place, and laid before them the affairs on account of which he had summoned them. Then the deputies of each of the

three orders, of nobles, of clergy, and of the third estate, met apart, and prepared their cahier or memorial, containing their answer to the propositions which had been made to them, together with the representations which they thought proper to lay before the king. These answers and representations were considered by the king in his council, and generally gave rise to an ordonnance. These ordonnances were not addressed to the three estates in common. Sometimes the king addressed an ordonnance to each of the estates in particular. Sometimes he mentioned the assembly of the three estates. Sometimes mention is made only of the assembly of that estate to which the ordonnance is addressed. Sometimes no mention at all is made of the assembly of estates which suggested the propriety of enacting the law. Preface au tom. iii. des Ordon. p. xx. Thus the states-gemeral had only the privilege of advising and remonstrating; the legislative authority resided in the king alone.

# Note XL. Sect. III. p. 162. [RR]

If the parliament of Paris be considered only as the supreme court of justice, every thing relative to its origin and jurisdiction is clear and obvious. It is the ancient court of the king's palace, new-modelled, rendered stationary, and invested with an extensive and ascertained jurisdiction. The power of this court, while employed in this part of its functions, is not the object of present consideration. pretensions of the parliament to control the exercise of the legislative authority, and its claim of a right to interpose with respect to public affairs, and the political administration of the kingdom, lead to inquiries attended with great difficulty. As the officers and members of the parliament of Paris were anciently nominated by the king, were paid by him, and on several occasions were removed by him at pleasure (Chronic. Scandaleuse de Louis XI. chez les Mem. de Comines, tom. ii. p. 51. Edit. de M. Lenglet de Fresnoy), they cannot be considered as representatives of the people, nor could they claim any share in the legislative power as acting in their name. We must therefore search for some other source of this high privilege. 1. The parliament was originally composed of the most eminent persons in the kingdom. The peers of France, ecclesiastics of the highest order, and noblemen of illustrious birth, were members of it, to whom were added some clerks and counsellors learned in the laws. Pasquier Recherches, p. 44, &c.

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Encyclopedic, tom. xii. art. Parlement, p. 3. 5. A court thus constituted was properly a committee of the statesgeneral of the kingdom, and was composed of those barons and fideles whom the kings of France were accustomed to consult with regard to every act of jurisdiction or legislative authority. It was natural, therefore, during the intervals between the meetings of the states-general, or during those periods when that assembly was not called, to consult the parliament, to lay matters of public concern before it. and to obtain its approbation and concurrence, before any ordonnance was published to which the people were required 2. Under the second race of kings, every new law was reduced into proper form by the chancellor of the kingdom, was proposed by him to the people, and, when enacted, was committed to him to be kept among the public records, that he might give authentic copies of it to all who should demand them. Hincm. de Ord. Palat. c. 16. Capitul. Car. Calv. tit. xiv. § 11. tit. xxxiii. The chancellor presided in the parliament of Paris at its first institution. Encyclopedie, tom. iii. art. Chancelier, p. 88. It was, therefore, natural for the king to continue to employ him in his ancient functions of framing, taking into his custody, and publishing the ordonnances which were issued. To an aucient copy of the Capitularia of Charlemagne, the following words are subjoined: Anno tertio clementissimi domini nostri Caroli Augusti, sub ipso anno, hæc facta Capitula sunt, et consignata Stephano comiti, ut hæc manifesta faceret Parisiis mallo publico, et illa legere faceret coram Scabineis, quod ita et fecit, et omnes in uno consenserunt, quod ipsi voluissent observare usque in posterum, ctiam omnes Scabinei, Episcopi, Abbates, Comites, manu propria subter signaverunt. Bouquet Recueil, tom. v. p. 663. Mallus signifies not only the public assembly of the nation, but the court of justice held by the Comes, or missus dominicus. Scabini were the judges, or the assessors of the judges in that court. Here then seems to be a very early instance, not only of laws being published in a court of justice, but of their being verified or confirmed by the subscription of the judges. If this was the common practice, it naturally introduced the verifying of edicts in the parliament of Paris. But this conjecture I propose with that diffidence, which I have felt in all my reasonings concerning the laws and institutions of foreign nations. 3. This supreme court of jugtice in France was dignified with the appellation of perliament, the name by which the general assembly of the nation was distinguished towards the close of the second race of kings; and men, both in reasoning and in conduct, were wonderfully influenced by the similarity of names. The preserving the ancient names of the magistrates established while the republican government subsisted in Rome, enabled Augustus and his successors to assume new powers with less observation and greater case. The bestowing the same name in Flance upon two courts which were extremely different, contributed not a little to confound their jurisdictions and functions.

All these circumstances concurred in leading the kings of France to avail themselves of the parliament of Paris as the instrument of reconciling the people to the exercise of legislative authority by the crown. The French, accustomed to see all new laws examined and authorized before they were published, did not sufficiently distinguish between the effect of performing this in the national assembly, or in a court appointed by the king. But as that court was composed of respectable members, and who were well skilled in the laws of their country, when any new edict received its sanction, that was sufficient to dispose the people to submit to it.

When the practice of verifying and registering the royal edicts in the parliament of Paris became common, the parliament contended that this was necessary in order to give them legal authority. It was established as a fundamental maxim in French jurisprudence, that no law could be published in any other manner; that without this formality no edict or ordonnance could have any effect; that the people were not bound to obey it, and ought not to consider it as an edict or ordonnance, until it was verified in the supreme court, after free deliberation. Roche-flavin des Parlemens de France, 4to. Gen. 1621, p. 921. The parliament, at different times, hath, with great fortitude and integrity, opposed the will of their sovereigns; and, notwithstanding their repeated and peremptory requisitions and commands, hath refused to verify and publish such edicts as it conceived to be oppressive to the people, or subversive of the constitution of the kingdom. Roche-flavin reckons, that between the year 1562 and the year 1589, the parliament refused to verify more than a hundred edicts of the kings. Ibid. 925. Many instances of the spirit and constancy with which the parliaments of France opposed pernicious laws, and asserted their own privileges, are enumerated by Limnæus in his Notitiæ Regni Franciæ, lib. i. c. 9. p. 224.

But the power of the parliament to maintain and defend this privilege, bore no proportion to its importance, or to the courage with which the members asserted it. When any monarch was determined that an edict should be carried into execution, and found the parliament inflexibly resolved not to verify or publish it, he could easily supply this defect by the plenitude of his regal power. He repaired to the parliament in person, he took possession of his seat of justice, and commanded the edict to be read, verified, registered, and published in his presence. Then, according to another maxim of Freuch law, the king himself being present, neither the parliament, nor any magistrate whatever. can exercise any authority, or perform any function. Advenientæ Principe, cessat magistratus. Roche-flavin, ibid, p. 928, 929. Encyclopedic, tom. ix. art. Lit. de Justice. p. 581. Roche-flavin mentions several instances of kings who actually exerted this prerogative, so fatal to the residue of the rights and liberties transmitted to the French by their ancestors. Pasquier produces some instances of the same kind. Rech. p. 61. Limnæus enumerates many other instances, but the length to which this note has swelled, prevents me from inserting them at length, though they tend greatly to illustrate this important article in the French history, p. 245. Thus, by an exertion of prerogative, which, though violent, seems to be constitutional, and is justified by innumerable precedents, all the efforts of the parliament to limit and control the king's legislative authority are rendered ineffectual.

I have not attempted to explain the constitution or jurisdiction of any parliament in France but that of Paris. All of them are formed upon the model of that most ancient and respectable tribunal, and all my observations concerning it will apply with full force to them.

#### Note XLI. Sect. III. p. 166. [SS]

THE humiliating posture in which a great emperor implored absolution is an event so singular, that the words in which Gregory himself describes it merit a place here, and convey a striking picture of the arrogance of that pontiff. Per triduum, ante portam castri, deposito omni regio cultu, miserabiliter, utpote discalceatus, et lancis indutus, persistens, non prius cum multo fletu apostolicæ miserationis auxilium, et consolationem implorari destitit, quam omnes qui ibi aderant, et ad quos rumor ille pervenit, ad tantam

pietatem, et compassionis misericordiam movit, ut pro co multis precibus et lacrymis intercedentes, omnes quidem insolitam nostræ mentis duritiem mirarentur; nonnulli vero in nobis non apostolicæ sedis gravitatem, sed quasi tyrannicæ feritatis crudelitatem esse clamarunt. Epist. Gregor. ap. Memorie della Contessa Matilda da Fran. Mar. Fiorentini. Lucca, 1756, vol. i. p. 174.

# Note XLII. Sect. III., p. 175. [TT]

As I have endeavoured in the history to trace the various steps in the progress of the constitution of the empire, and to explain the peculiarities in its policy very fully, it is not necessary to add much by way of illustration. What appears to be of any importance, I shall range under distinct heads.

1. With respect to the power, jurisdiction, and revenue of the emperors. A very just idea of these may be formed by attending to the view which Pfeffel gives of the rights of the emperors at two different periods. The first at the close of the Saxon race, A. D. 1024. These, according to his enumeration, were the right of conferring all the great ecclesiastical benefices in Germany; of receiving the revenues of them during a vacancy; of mortmain, or of succeeding to the effects of ecclesiastics who died intestate. The right of confirming or of annulling the elections of the popes. The right of assembling councils, and of appointing them to decide concerning the affairs of the church. The right of conferring the title of king upon their vassals. The right of granting vacant fiefs. The right of receiving the revenues of the empire, whether arising from the Imperial domains, from imposts and tolls, from gold or silver mines, from the taxes paid by the Jews, or from forfeitures. right of governing Italy as its proper sovereigns. The right of creeting free cities, and of establishing fairs in them. The right of assembling the diets of the empire, and of fixing the time of their duration. The right of coining money, and of conferring that privilege on the states of the empire. right of administering both high and low justice within the territories of the different states. Abregé, p. 160. other period is at the extinction of the emperors of the families of Luxemburg and Bavaria, A. D. 1437. According to the same author, the Imperial prerogatives at that time were the right of conferring all dignities and titles, except the privilege of being a state of the empire. The right of

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Preces primarie, or of appointing once during their reign a dignitary in each chapter or religious house. The right of granting dispensations with respect to the age of majority. The right of erecting cities, and of conferring the privilege of coining money. The right of calling the meetings of the diet, and of presiding in them. Abregé, &c. p. 507. It were easy to shew that Mr. Pfeffel is well founded in all these assertions, and to confirm them by the testimony of the most respectable authors. In the one period the emperors appear as mighty sovereigns with extensive prerogatives; in the other, as the heads of a confederacy with

very limited powers.

The revenues of the emperors decreased still more than their authority. The early emperors, and particularly those of the Saxon line, besides their great patrimonial or hereditary territories, possessed an extensive domain both in Italy and Germany, which belonged to them as emperors. Italy belonged to the emperors as their proper kingdom. and the revenues which they drew from it were very considerable. The first alienations of the Imperial revenue were made in that country. The Italian cities having acquired wealth, and aspiring at independence, purchased their liberty from different emperors, as I have observed. Note XV. The sums which they paid, and the emperors with whom they concluded these bargains, are mentioned by Casp. Klockius de Ærario Norimb. 1671, p. 85, &c. Charles IV. and his son Wenceslaus, dissipated all that remained of the Italian branch of the domain. The German domain lay chiefly upon the banks of the Rhine, and was under the government of the counts Palatine. It is not easy to mark out the boundaries, or to estimate the value of this ancient domain, which has been so long incorporated with the territories of different princes. Some hints with respect to it may be found in the glossary of Speidelius, which he has entitled Speculum Juridico Philologicopolitico Historicum Observationem, &c. Norimb. 1673. vol. i. 679. 1045. A more full account of it is given by Klockius de Ærario, p. 84. Besides this, the emperors possessed considerable districts of land lying intermixed with the estates of the dukes and barons. They were accustomed to visit these frequently, and drew from their vassals in each what was sufficient to support their court during the time of their residence among them. Annalista. ap. Struv. tom. i. p. 611. A great part of these detached possessions were seized by the nobles during the long inter-

regnum, or during the wars occasioned by they contests between the emperors and the court of Rome. At the same time that such encroachments were made on the fixed or territorial property of the emperors, they were robbed almost entirely of their casual revenues. The princes and barons appropriating to themselves taxes and duties of every kind, which had usually been paid to them. Pfeffel Abregé, p. 374. The profuse and inconsiderate ambition of Charles IV. squandered whatever remained of the Imperial revenues after so many defalcations. He, in the year 1376, in order to prevail with the electors to choose his son Wenceslaus king of the Romans, promised each of them a hundred thousand crowns. But being unable to pay so large a sum, and eager to secure the election to his son, he alienated to the three ecclesiastical electors, and to the count Palatine, such countries as still belonged to the Imperial domain on the banks of the Rhine, and likewise made over to them all the taxes and tolls then levied by the emperors in that district. Trithemius, and the author of the Chronicle of Magdeburgh, enumerate the territories and taxes which were thus alienated, and represent this as the last and fatal blow to the Imperial authority. Struv. Corp. vol. i. p. 437. From that period the shreds of the ancient revenues possessed by the emperors have been so inconsiderable, that, in the opinion of Speidelius, all that they yield would be so far from defraying the expense of supporting their household, that they would not pay the charge of maintaining the posts established in the empire. Speidelii Speculum, &c. vol. i. p. 680. These funds, inconsiderable as they were, continued to decrease. Granvelle, the minister of Charles V., asserted, in the year 1546, in presence of several of the German princes, that his master drew no money at all from the empire. Sleid. History of The same is the the Reformation, Lond. 1689, p. 372. case at present. Traité de Droite Publique de l'Empire, par M. le Coq. de Villeray, p. 55. From the reign of Charles IV., whom Maximilian called the pest of the empire, the emperors have depended entirely on their hereditary dominions, as the chief, and almost the only source of their power, and even of their subsistence.

2. The ancient mode of electing the emperors, and the various changes which it underwent, require some illustration. The Imperial crown was originally attained by election, as well as those of most monarchies in Europe. An opinion long prevailed among the antiquaries and public

lawyers of Germany, that the right of choosing the emperors was vested in the archbishops of Mentz, Cologne, and Treves, the king of Bohemia, the duke of Saxony, the marquis of Brandenburgh, and the count Palatine of the Rhine, by an edict of Otho III. confirmed by Gregory V. about the year 996. But the whole tenor of history contradicts this opinion. It appears, that from the earliest period in the history of Germany, the person who was to reigh over all, was elected by the suffrage of all. Thus Conrad I. was elected by all the people of the Franks, say some annalists: by all the princes and chief men, say others; by all the nation, say others. See their words, Struv. Corp. 211. Conringius de German. Imper. Repub. Acroamato Sex. Ebroduni, 1654, p. 103. In the year 1024, posterior to the supposed regulations of Otho III., Conrad II. was elected by all the chief men, and his election was approved and confirmed by the people. Struv. Corp. 284. At the election of Lotharius II. A.D. 1125, sixty thousand persons of all ranks were present. He was named by the chief men, and their nomination was approved by the people. Struy, ibid. p. 357. The first author who mentions the seven electors is Martinus Polonus, who flourished in the reign of Frederick II., which ended A. D. 1250. We find that, in all the ancient elections to which I have referred, the princes of the greatest power and authority were allowed by their countrymen to name the person whom they wished to appoint emperor, and the people approved or disapproved of their nomination. This privilege of voting first is called by the German lawyers the right of Prætaxation. Abregé, p. 316. This was the first origin of the exclusive right which the electors acquired. The electors possessed the most extensive territories of any princes in the empire; all the great offices of the state were in their hands by hereditary right; as soon as they obtained or engrossed so much influence in the election as to be allowed the right of prætaxation, it was vain to oppose their will, and it even became unnecessary for the inferior ecclesiastics and barons to attend, when they had no other function but that of confirming the deed of these more powerful princes by their assent. During times of turbulence, the subordinate members of the Germanic body could not resort to the place of election without a retinue of armed vassals, the expense of which they were obliged to defray out of their own revenues; and finding their attendance to be unnecessary, they were unwilling to waste them to no purpose. The

rights of the seven electors were supported by all the descendants and allies of their powerful families, who shared in the splendour and influence which they enjoyed by this distinguishing privilege. Pfeffel Abregé, p. 376. seven electors were considered as the representatives of all the orders which composed the highest class of German nobility. There were three archbishops, chancellors of the three great districts into which the empire was anciently divided; one king, one duke, one marquis, and one count. All these circumstances contributed to render the introduction of this considerable innovation into the constitution of the Germanic body extremely easy. Every thing of importance, relating to this branch of the political state of the empire is well illustrated by Onuphrius Panvinius, an Augustinian monk of Verona, who lived in the reign of Charles V. His treatise, if we make some allowance for that partiality which he expresses in favour of the powers which the popes claimed in the empire, has the merit of being one of the first works in which a controverted point in history is examined with critical precision, and with a proper attention to that evidence which is derived from records, or the testimony of contemporary historians. is inserted by Goldastus in his Politica Imperialia, p. 2.

As the electors have engrossed the sole right of choosing the emperors, they have assumed likewise that of deposing This high power the electors have not only presumed to claim, but have ventured, in more than one instance, to exercise. In the year 1298, a part of the electors deposed Adolphus of Nassau, and substituted Albert of Austria in his place. The reasons on which they found their sentence, shew that this deed flow from factious. not from public-spirited motives. Struv. Corp. vol. i. 540. In the first year of the fifteenth century, the electors deposed Wenceslaus, and placed the Imperial crown on the head of Rupert, elector Palatine. The act of deposition is still extant. Goldasti Constit. vol. i. 379. It is pronounced in the name and by the authority of the electors, and confirmed by several prelates and barons of the empire, who were present. The exertions of the electoral power demonstrate that the Imperial authority was sunk very low.

The other privileges of the electors, and the rights of the electoral college, are explained by the writers on the public law in Germany.

3. With respect to the diets or general assemblies of the

empire, it would be necessary, if my object were to write a particular history of Germany, to enter into a minute detail concerning the forms of assembling them, the persons who have right to be present, their division into colleges or benches, the objects of their deliberation, the mode in which they carry on their debates or give their suffrages, and the authority of their decrees or recesses. But as my only object is to give the outlines of the constitution of the German empire, it will be sufficient to observe, that, originally, the diets of the empire were exactly the same with the assemblies of March and of May, held by the kings of France. They met, at least, once a year. Every freeman had a right to be present. They were assemblies in which a monarch deliberated with his subjects concerning their common interest. Arumæus de Comitiis Rom. German. Imperii. 4to. Jenæ, 1660, cap. 7. No. 20, &c. But when the princes, dignified ecclesiastics, and barons, acquired territorial and independent jurisdiction, the diet became an assembly of the separate states, which formed the confederacy of which the emperor was head. While the constitution of the empire remained in its primitive form, attendance on the diets was a duty, like the other services due from feudal subjects to their sovereign, which the members were bound to perform in person; and if any member who had a right to be present in the diet neglected to attend in person, he not only lost his vote, but was liable to a heavy penalty. Arumæus de Comit. c. 5. No. 40. Whereas, from the time that the members of the diet became independent states, the right of suffrage was annexed to the territory or dignity, not to the person. The members, if they could not, or would not attend in person, might send their deputies, as princes send ambassadors, and they were entitled to exercise all the rights belonging to their constituents. Ibid. No. 42. 46. 49. By degrees, and upon the same principle of considering the diet as an assembly of independent states, in which each confederate had the right of suffrage, if any member possessed more than one of those states or characters which entitle to a seat in the diet, he was allowed a proportional number of suffrages. Abregé, 622. From the same cause the Imperial cities, as soon as they became free, and acquired supreme and independent jurisdiction within their own territories, were received as members of the diet. The powers of the diet. extend to every thing relative to the Common concern of the Germanic body, or that can interest or effect it as a confederacy. The diet takes no cognizance of the interior administration in the different states, unless that happens to

disturb or threaten the general safety.

4. With respect to the Imperial chamber, the jurisdiction of which has been the great source of order and tranquillity in Germany, it is necessary to observe, that this court was instituted in order to put an end to the calamities occasioned by private wars in Germany. I have already traced the rise and progress of this practice, and pointed out its pernicious effects as fully as their extensive influence during the middle ages required. In Germany private wars seem to have been more frequent, and productive of worse consequences, than in the other countries of Europe. There are obvious reasons for this. The nobility of Germany were extremely numerous, and the causes of their dissension multiplied in proportion. The territorial jurisdiction which the German nobles acquired, was more complete than that possessed by their order in other nations. They became, in reality, independent powers, and they claimed all the privileges of that character. The long interregrum from A. D. 1256, to A. D. 1273, accustomed them to an uncontrolled licence, and led them to forget that subordination which is necessary in order to maintain public tranquillity. At the time when the other monarchs of Europe began to acquire such an increase of power and revenues as added new vigour to their government, the authority and revenues of the emperors continued gradually to decline. The diets of the empire, which alone had authority to judge between such mighty barons, and power to enforce its decision, met very seldom. Conring. Acroamata, p. 234. The diets, when they did assemble, were often composed of several thousand members, Chronic. Constat. ap. Struv. Corp. i. p. 546; and were tumultuary assemblies, ill qualified to decide concerning any question of right. The session of the diets continued only two or three days, Pfeffel Abregé, p. 244; so that they had no time to hear and discuss any cause that was in the smallest degree intricate. Thus Germany was left, in some measure, without any court of judicature capable of deciding the contests between its more powerful members, or of repressing the evils occasioned by their private wars.

All the expedients which were employed in other countries of Europe, in order to restrain this practice, and which Lhave described Note XXI., were tried in Germany with little effect. The confederacies of the nobles and of the

cities, and the division of Germany into various circles. which I mentioned in that note, were found likewise insufficient. As a last remedy, the Germans had recourse to arbiters, whom they called Austregæ. The barons and states in different parts of Germany joined in conventions, by which they bound themselves to refer all controversies that might arise between them to the determination of Austream. and to submit to their sentences as final. These arbiters are named sometimes in the treaty of convention, an instance of which occurs in Ludewig Reliquæ Manuser. omnis ævi. vol. ii. p. 212; sometimes they were chosen by mutual consent upon occasion of any contest that arose; sometimes they were appointed by neutral persons; and sometimes the choice was left to be decided by lot. Datt. de Pace Publica Imperii, lib. i. c.p. 27. No. 60, &c. Speidelius Speculum, &c. voc. Austrag. p. 95. Upon the introduction of this practice, the public tribunals of justice became in a great measure uscless, and were almost entirely described.

In order to re-establish the authority of government, Maximilian I. instituted the Imperial chamber at that period which I have mentioned. This tribunal consisted originally of a president, who was always a nobleman of the first order, and of sixteen judges. The president was appointed by the emperor, and the judges, partly by him, and partly by the states, according to forms which it is unnecessary to describe. A sum was imposed, with their own consent, on the states of the empire, for paying the salaries of the judges and officers in this court. The Imperial chamber was established first at Francfort on the Maine. During the reign of Charles V. it was removed to Spires. and continued in that city above a century and a half. It is now fixed at Wetzlar. This court takes cognizance of all questions concerning civil right between the states of the empire, and passes judgment in the last resort. and without appeal. To it belongs likewise the privilege of judging in criminal causes, which may be considered as connected with the preservation of the public peace. Pfeffel Abregé, 560.

All causes relating to points of feudal right or jurisdiction, together with such as respect the territories which hold of the empire in Italy, belong properly to the jurisdiction of the Aulic council. This tribunal was formed upon the model of the ancient court of the palace instituted by the emperors of Germany. It depended not upon the states of the empire, but upon the emperor; he having the right of

appointing at pleasure all the judges of whom it is composed. Maximilian, in order to secure some compensation for the diminution of his authority, by the powers vested in the Imperial chamber, prevailed on the diet. A. D. 1512. to give its consent to the establishment of the Aulic council. Since that time, it has been a great object of policy in the court of Vienna to extend the jurisdiction, and support the authority of the Aulic council, and to circumscribe and weaken those of the Imperial chamber. The tedious forms and dilatory proceedings of the Imperial chamber have furnished the emperors with pretexts for doing so. Lites Spiræ, according to the witticism of a German lawyer. spirant, sed nunquam expirant. Such delays are unavoidable in a court composed of members named by many different states, jealous of each other. Whereas the judges of the Aulic council, depending upon one master, and being responsible to him alone, are more vigorous and decisive. Puffendorf. de Statu Imper. German. cap. v. § 20. Pfeffel. Abregé, p. 581.

# Note XLIII. Sect. III. p. 177. [UU]

THE description which I have given of the Turkish government is conformable to the accounts of the most intelligent travellers who have visited that empire. The count de Marsigli, in his treatise concerning the military state of the Turkish empire, ch. vi. and the author of Observations on the Religion, Laws, Covernment, and Manners of the Turks, published at London, 1768, vol. i. p. 81, differ from other writers who have described the political constitution of that powerful monarchy. As they had opportuuity, during their long residence in Turkey, to observe the order and justice conspicuous in several departments of administration, they seem unwilling to admit that it should be denominated a despotism. But when the form of government in any country is represented to be despotic, this does not suppose that the power of the monarch is continually exerted in acts of violence, injustice, and cruelty. Under political constitutions of every species, unless when some frantic tyrant happens to hold the sceptre, the ordinary administration of government must be conformable to the principles of justice, and if not active in promoting the welfare of the people, cannot certainly have their destruction for its object. A state in which the sovereign possesses the absolute command of a vast military force, together with the disposal of an extensive revenue; in which the people have no privileges, and no part either immediate or remote in legislation; in which there is nobody of hereditary nobility, jealous of their own rights and distinctions, to stand as an intermediate order between the prince and the people, cannot be distinguished by any name but that of a despotism. The restraints, however, which I have mentioned, arising from the Capiculy, and from religion, are powerful. But they are not such as change the nature or denomination of the government. When a despote prince employs an armed force to support his authority, he commits the supreme power to their hands. The prætorian bands in Rome dethroned, murdered, and exalted their princes, in the same walton manner with the soldiery of the Porte at Constantinople. But notwithstanding this, the Roman emperors have been considered by all political

writers as possessing despotic power.

The author of Observations on the Religion, Law, Government, and Manners of the Turks, in a preface to the second edition of his work, hath made some remarks on what is contained in this note, and in that part of the text to which it refers. It is with dissidence I set my opinion in opposition to that of a person who has observed the government of the Turks with attention, and has described it with abilities. But after a careful review of the subject. to me the Turkish government still appears of such a species as can be ranged in no class but that to which political writers have given the name of despotism. There is not in Turkey any constitutional restraint upon the will of the sovereign, or any barrier to circumscribe the exercise of his power, but the two which I have mentioned; one afforded by religion, the principle upon which the authority of the sultan is founded, the other by the army, the instrument which he must employ to maintain his power. The author represents the *Ulema*, or body of the law, as an intermediate order between the monarch and the people. Pref. p. 30. But whatever restraint the authority of the Ulema may impose upon the sovereign, is derived from religion. The Moulahs, out of whom the mufti and other chief officers of the law must be chosen, are ecclesiastics. It is as interpreters of the Koran or Divine Will that they are objects of veneration. The check, then, which they give to the exercise of arbitrary power is not different from one of these of which I took notice. Indeed, this restraint cannot be very

considerable. The musti, who is the head of the order, as well as every inserior officer of law, is named by the sultan, and is removable at his pleasure. The strange means employed by the Ulema in 1746, to obtain the dismission of a minister whom they hated, is a manifest proof that they possess but little constitutional authority which can serve as a restraint upon the will of the sovereign. Observat. p.92 of 2d edit. If the author's idea be just, it is astonishing that the body of the law should have no method of remonstrating against the errors of administration, but by setting fire to the capital.

The author seems to consider the Capiculy or soldiery of the Porte, neither as formidable instruments of the sultan's power, nor as any restraint upon the exercise of it. reasons for this opinion are, that the number of the Capiculy is small in proportion to the other troops which compose the Turkish armies, and that in time of peace they are undisciplined. Pref. 2d edit. p. 23, &c. But the troops stationed in a capital, though their numbers be not great, are always masters of the sovereign's person and power. The prætorian bands bore no proportion to the legionary troops in the frontier provinces. The soldiery of the Porte are more numcrous, and must possess power of the same kind, and be equally formidable, sometimes to the sovereign, and oftener to the people. However much the discipline of the Janizaries may be neglected at present, it certainly was not so in that age to which alone my description of the Turkish government applies. The author observes, Pref. p. 29. that the Janizaries never deposed any sultan of themselves, but that some form of law, true or false, has been observed, and that either the mufti, or some other minister of religion, has announced to the unhappy prince the law which renders him unworthy of the throne. Observ. p. 102. This will always happen. In every revolution, though brought about by military power, the deeds of the soldiery must be confirmed and carried into execution with the civil and religious formalities peculiar to the constitution.

This addition to the note may serve as a farther illustration of my own sentiments, but is not made with an intention of entering into any controversy with the author of Observations, &c. to whom I am indebted for the obliging terms in which he has expressed his remarks upon what I had advanced. Happy were it for such as venture to conmunicate their opinions to the world, if every animadversion upon them were conveyed with the same candid and liberal spirit: In one particular, however, he seems to have misapprehended what I meant. Prof. p. 17. I certainly did not mention his or count Marsigh's long residence in Turkey, as a circumstance which should detract from the weight of their authority. I took notice of it, in justice to my readers, that they might receive my opinion with distrust, as it differed from that of persons whose means of information was so far superior to mine.

# Note XLIV. Sect. III. p. 179. [XX]

THE institution, the discipline, and privileges of the Janizaries are described by all the authors who give any account of the Turkish government. The manner in which enthusiasm was employed in order to inspire them with courage, is thus related by prince Cantemir: " When Amurath I. had formed them into a body, he sent them to Haji Bektash, a Turkish saint, famous for his miracles and prophecies, desiring him to bestow on them a banner, to pray to God for their success, and to give them a name. The saint, when they appeared in his presence, put the sleeve of his gown upon one of their heads, and said, " Let them be called Yengicheri. Let their countenance be ever bright, their hands victorious, their sword keen; let their spear always hang over the heads of their enemies, and wherever they go, may they return with a shining face." History of the Ottoman Empire, p. 38. The number of Janizaries, at the first institution of the body, was not considerable. der Solyman, in the year 1521, they amounted to twelve thousand. Since that time their number has areatly increased, Marsigli Etat, &c. ch. xvi. p. 68. Though Solvman possessed such abilities and authority as to restrain this formidable body within the bounds of obedience, yet its tendency to limit the power of the sultan was, even in that age, forescen by sagacious observers. Nicolas Daulphinois, who accompanied M. D'Aramon, ambassador from Henry II. of France to Solyman, published an account of his travels, in which he describes and celebrates the discipline of the Janizaries, but at the same time predicts that they would, one day, become formidable to their masters, and act the same part at Constantinople, as the Prætorian bands had done at Rome. Collection of Voyages from the Earl of Oxford's Library, vol. i. p. 599.

### Note XLV. Sect. III. p. 181. [Y,Y]

SOLYMAN the Magnificent, to whom the Turkish historians have given the surname of Canuni, or instituter of rules, first brought the finances and military establishment of the Turkish empire into a regular form. He divided the military force into the Capiculy or soldiery of the Porte, which was properly the standing army, and Serrataculy or soldiers appointed to guard the frontiers. The chief strength of the latter consisted of those who held Timariots and Ziams. These were portions of land granted to certain persons for life, in much the same manner as the military fiefs among the nations of Europe, in return for which military Solyman, in his Canu-Namé, or service was performed. book of regulations, fixed with great accuracy the extent of these lands in each province of the empire, appointed the precise number of soldiers each person who held a Timariot or a Ziam should bring into the field, and established the pay which they should receive while engaged in service. Count Marsigli and Sir Paul Rycaut have given extracts from this book of regulations, and it appears, that the ordinary establishment of the Turkish army exceeded one hundred and fifty thousand men. When these were added to the soldiery of the Porte, they formed a military power greatly superior to what any Christian state could command in the sixteenth century. Marsigli Etal Militaire, &c. p. Rycaut's State of the Ottoman Empire, book iii. ch. As Solyman, during his active reign, was engaged so constantly in war, that his troops were always in the field, the Serrataculy became almost equal to the Janizaries themselves in discipline and valour.

It is not surprising, then, that the authors of the sixteenth century should represent the Turks as far superior to the Christians, both in the knowledge and in the practice of the art of war. Guiceiardini informs us, that the Italians learned the art of fortifying towns from the Turks. Histor. lib. xv. p. 266. Bushequius, who was ambassador from the emperor Ferdinand to Solyman, and who had opportunity to observe the state both of the Christian and Turkish armies, published a discourse concerning the best manner of earrying on war against the Turks, in which he points out at great length the immense advantages which the Infidels possessed with respect toodiscipline and military improvements of every kind. Bushequii Opere, edit. Elzevir, p.

393, &c. 4 The testimony of other authors might be added, if the matter were in any degree doubtful.

BEFORE I conclude these Proofs and Illustrations, I ought to explain the reason of two omissions in them; one of which it is necessary to mention on my own account, the other to obviate an objection to this part of the work.

In all my inquiries and disquisitions concerning the progress of government, manners, literature, and commerce, during the middle ages, as well as in my delingations of the political constitution of the different states of Eurene at the opening of the sixteenth century, I have not once mentioned M. de Voltaire, who, in his Essau sur l'Histoire generale, has reviewed the same period, and has treated of all these This does not proceed from inattention to the works of that extraordinary man, whose genius, no less enterprising than universal, has attempted almost every different species of literary composition. In many of these he excels. In all, if he had left religion untouched, he is instructive and agreeable. But as he seldom imitates the example of modern historians in citing the authors from whom they derived their information, I could not, with propriety, appeal to his authority in confirmation of any doubtful or unknown fact. I have often, however, followed him as my guide in these researches; and he has not only pointed out the facts with respect to which it was of importance to inquire, but the conclusions which it was proper to draw from them. If he had, at the same time, mentioned the books which relate these particulars, a great part of my labour would have been unnecessary, and many of his readers. who now consider him only as an entertaining and lively writer, would find that he is a learned and well-informed historian.

As to the other omission, every intelligent reader must have observed, that I have not entered, either in the historial part of this volume, of in the Proofs and Illustrations, into the same detail with respect to the ancient laws and customs of the British kingdoms, as concerning those of the other European nations. As the capital facts with regard to the progress of government and manners in their own country are known to most of my readers, such a detail-appeared to me to be less essential. Buch facts and observations however as were necessary towards completing

my design in this part of the work. I have thentioned under the different articles which are the subjects of my disquisitions. The state of government, in all the nations of Europe, having been nearly the same during several ages, nothing can tend more to illustrate the progress of the English constitution, than a careful inquiry into the laws and customs of the kingdoms on the continent. This source of information has been too much neglected by the English antiquaries and lawvers. Filled with admiration of that happy constitution now established in Great Britain, they have been more attentive to its forms and principles, than to the condition and ideas of remote times, which in almost every particular differ from the present. While engaged in perusing the Jaws, charters, and early historians of the continental kin doms. I have often been led to think that an attempt to illustrate the progress of English jurisprudence and policy, by a comparison with those of other kingdoms in a similar situation, would be of great utility, and might throw much light on some points which are now obscure, and decide others, which have been long controverted.

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